



PUSHED TO THE EDGE

INDIGENOUS RIGHTS DENIED
IN BANGLADESH'S CHITTAGONG
HILL TRACTS

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Cover photo: Three generations of a Pahari family living on government “forest land” in a remote area of the Chittagong Hill Tracts, Bangladesh, June 2011.

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1. INTRODUCTION

“The Army tell me the settlers are going to come here and take my land. They are going to live here. You won’t be able to live here anymore.”

Paihla Chingnu Marma, Sajek, June, 2011

More than 15 years after an agreement guaranteeing the rights of Pahari-Indigenous Peoples to their traditional lands in Bangladesh’s Chittagong Hill Tracts, Pahari continue to wait for their lands to be restored to them. Clashes between the Pahari and Bengali settlers who have gradually and repeatedly occupied their land are frequent.

The government of Bangladesh has remained ineffectual throughout, failing to protect the Pahari’s right to security, their rights to traditional lands, livelihood and culture, and to effective participation in decisions that affect them.

DECADES OF ETHNIC CONFLICT AND DISPLACEMENT

The Chittagong Hill Tracts of the southeastern edge of Bangladesh has for decades been the site of ethnic conflict. As highlighted in chapter 2 of this report, the conflict followed calls by Pahari for recognition and protection of their rights to traditional lands and autonomy, and their resistance to government attempts to assimilate them within the mainland Bengali majority culture.¹

From 1976 to 1997, an internal armed conflict between Bangladesh’s armed forces and the Pahari insurgent group Shanti Bahini (“peace force”) racked the region. Pahari villagers were unlawfully killed by Bangladeshi law enforcement personnel (members of the army, other security forces and militias).² The Shanti Bahini also carried out a number of deliberate and arbitrary killings.³

Tens of thousands of Pahari crossed over to India to avoid the violence. Today it is estimated that 90,000 Pahari families remain internally displaced.⁴ Most fled into the deep forest areas of the Chittagong Hill Tracts.⁵ Large areas of traditional land vacated by Pahari fleeing the violence were occupied by Bengali settlers. They had been encouraged by the government to migrate to the hills under army protection as part of a counter-insurgency strategy.⁶

FAILURE TO IMPLEMENT 1997 PEACE ACCORD

After many years of negotiations, the Chittagong Hill Tracts Peace Accord (the Accord), signed in December 1997 between Prime Minister Sheikh Hasina’s Awami League

government and Santu Larma, leader of the Parbattya Chattagram Jana Sanghati Samity (JSS political party),⁷ formally brought an end to the armed conflict.⁸ The two sides received international praise for their commitment to a lasting peace.

The Accord promises a series of reforms to restore a measure of autonomy and promote the cultural, economic, social, civil and political rights of Pahari. Pahari refugees returning from India and internally displaced Pahari who fled to other parts of Bangladesh or to deep forest areas in the Chittagong Hill Tracts were to be rehabilitated through provision of land, housing and rations.⁹ A Land Commission was to investigate and resolve disputes over claims to lands.¹⁰ The Accord promises to remove all temporary army camps from the Chittagong Hill Tracts,¹¹ and to transfer administrative responsibility over a range of subjects – including management of land – from the central government to three Hill District Councils in the Chittagong Hill Tracts.¹² Quotas are established to ensure Pahari have majority representation on the boards of all these Councils.¹³ This includes a small quota for Pahari women.¹⁴

“The 1997 Chittagong Hill Tracts Peace Accord will be fully implemented. More efforts will be directed toward the development of underdeveloped tribal areas, and special programmes on priority basis will be taken to secure their rights and to preserve their language, literature, culture, and unique lifestyles.”

Awami League Election Manifesto of 2008¹⁵

More than 15 years have passed since the Accord was signed. The current Awami League government has been in office twice, each time led by Sheikh Hasina – immediately following the Accord's signing in 1997 to 2001 and in the current Awami League-led coalition government since 2009. However, as this report demonstrates, it has only partially met the commitments it made in the Accord. Even in the areas where it has taken some small steps, the outcome has not made a significant difference to the fulfillment of the rights of the Pahari. The main opposition political party, the Bangladesh Nationalist Party, has been openly critical of the Accord and failed to implement it when in government from 2001 to 2006.¹⁶

FAILURE OF LAND COMMISSION TO ADDRESS DISPUTES

This report focuses on the failure of the government of Bangladesh to recognize the human rights of Pahari-Indigenous Peoples to their traditional lands – lands which are inextricably bound with their identity, culture and economic life. These rights, as explained in chapter 4, are outlined in several international human rights instruments, including the UN Declaration on the Rights of Indigenous Peoples (the Declaration) and the ILO Indigenous and Tribal Populations Convention 1957 (ILO Convention No. 107). They include the rights to effective participation; free, prior and informed consent; and effective remedies.

The Land Commission and the reasons why it has failed to address disputes over the right to land in the Chittagong Hill Tracts are examined in chapter 5. Almost all those who Amnesty International met while conducting research for this report over two years – whether men or women, Bengali settlers, Pahari villagers or leaders, or army/government officials – felt that addressing the land issue was central to resolving many of the problems in the Chittagong Hill Tracts today.

The Land Commission has the authority to determine who owns land in the Chittagong Hill Tracts and to remove people from land occupied illegally.¹⁷ The Awami League government has formally established the Land Commission, appointed members, and provided the Land Commission with offices and some infrastructure.¹⁸ However, it remains an empty shell. To date, the Land Commission has not made a single determination on a land dispute.¹⁹ This is due to several reasons, including unilateral decisions taken by the Chair that have alienated Pahari communities. However, it is largely due to government failure to make the Land Commission's operation a priority. For example, Pahari political leaders have repeatedly called for the legislation establishing the Land Commission to be amended to remove the Chair's right of veto. And despite numerous statements by the government that it intends to do so, no amending legislation has been enacted by Parliament.

To compound matters, Bengali settlers have – especially since the Accord was signed – flowed into the Chittagong Hill Tracts and the pressure on land has continued. As shown in chapter 3, there are now regular clashes between Pahari villagers and Bengali settlers. Most of the disputes are over rights to land. The Pahari want their lands reinstated. Many now occupy government-owned forest lands and struggle to support their families. Pahari villagers depend on the land to provide them with food, and shelter. They fear that without legal title, their families risk being displaced again. At the same time, Bengali settlers arriving from outside the Chittagong Hill Tracts often come from very deprived communities and see the Chittagong Hill Tracts as offering some opportunity for their families.

The army maintains a heavy presence in the Chittagong Hill Tracts and is viewed by Pahari as providing support for Bengali settlers and their continued encroachment on Pahari traditional lands. There are frequent reports of human rights violations, including harassment of members of Pahari political parties and human rights defenders by the army, and violent attacks by Bengali settlers against Pahari men and women. Some of the clashes are between rival Pahari political parties.

SUMMARY OF RECOMMENDATIONS

Amnesty International's research shows that the government of Bangladesh is failing to fully protect Pahari's human rights to their traditional lands, including their right to livelihoods and way of life, their right to effective participation and free, prior and informed consent on matters relating to their communities and lands.

In this report, Amnesty International makes recommendations to the government of Bangladesh, focusing on the specific steps it needs to take, including:

- (1) Respecting, protecting and fulfilling the right of Pahari men, women and children to life, liberty and security.
- (2) Fully recognizing and protecting the rights of Pahari men and women to their traditional lands. The government must provide Pahari with an effective and culturally appropriate mechanism for recognizing these rights and ensure full and effective participation of Pahari men and women in its operational processes. The effective functioning of the Land Commission is essential to this.
- (3) Consistent with international human rights, not allowing Pahari traditional lands to be

taken without consulting with them and obtaining their free, prior and informed consent.

- (4) In addition to the Land Commission, establish a process of providing reparations in those cases where their traditional lands have been taken without their consent and cannot be restored to them.
- (5) Recognizing the right of Pahari to effective participation in all decisions affecting them, and to exercise their forms of autonomy. Particular attention needs to be addressed towards the effective participation of women in decisions affecting them.

1.1 METHODOLOGY

This report relies on a broad range of sources. However, it is based primarily on information provided to Amnesty International researchers in interviews, including focus groups, during three research missions to the Chittagong Hill Tracts, Bangladesh, in February and June 2011 and March 2012. In terms of Pahari villagers and human rights activists, the researchers met and interviewed over eighty people. We held two focus group meetings with Pahari women human rights defenders, with each meeting attended by a dozen human rights defenders. This report also draws on written submissions provided to Amnesty International, interviews outside Bangladesh, and independent research. In order to ensure the safety of those we interviewed, the names of most Pahari individuals quoted in the report have been changed.

Amnesty International carried out research in the capital Dhaka and two out of the three Chittagong Hill Tracts districts, namely Rangamati and Khagrachari. In Dhaka, we met with academics, government officials and UN officials from the UN Development Programme, UN Women, UNICEF and the International Labour Organization. We also met with Pahari activists and, on two occasions, the (then) chairman of the Land Commission. In the Chittagong Hill Tracts, we met with Pahari villagers; NGOs working on Pahari issues, including the Chittagong Hill Tracts Citizens Committee, Green Hill, and Taungya; lawyers working on human rights and Pahari issues, including Bangladesh Legal Aid and Services Trust (BLAST); Bengali settlers and Bengali-based NGOs; Pahari women human rights defenders, including the Hill Women's Federation, and lawyers working with women survivors of violence; and local government officials (Pahari and Bengali) and law enforcement personnel. We met with representatives of the JSS and the United Peoples Democratic Front (UPDF) – both Pahari political parties. We were unable to speak to Pahari villagers and human rights defenders in Bandarban district of the Chittagong Hill Tracts due to insistence by local officials that an official be present at the interviews. Nevertheless, we were able to hold interviews with Pahari villagers from Bandarban outside the district.

Outside of Bangladesh we met with academics, human rights NGOs and Pahari activists.

On our last two research trips we sought meetings with officials from the Ministry of Chittagong Hill Tracts Affairs, and the Foreign Ministry, but we did not receive a response. We did however meet with a senior adviser to the Prime Minister's office.

SCOPE OF THIS REPORT

The focus in this report is on Pahari rights to their traditional lands. We recognize that other Indigenous Peoples of Bangladesh beyond the Chittagong Hill Tracts continue to struggle for

recognition of their identities, institutions, cultures and rights to traditional lands. The focus on the Chittagong Hill Tracts is a result of the enduring nature of injustices related to territorial rights and autonomy – from British annexation to the present – and their continuation in the context of a climate of insecurity and violence directed at Pahari women and men. The need for an effective remedy for the displacement of Indigenous Peoples from their traditional lands became the focus of our research because it is almost invariably seen by all people we spoke to as a major issue and the root cause of much of the tension and continuing clashes between Pahari and Bengali settlers.

THANKS

Amnesty International would like to thank all of the people who assisted us with our research and gave up their time to meet with us, including those who did so despite personal concerns for their safety and security. We would especially like to thank Pahari Indigenous villagers and human rights defenders and advocates who assisted us with our research and all those working towards the promotion of human rights in the Chittagong Hill Tracts. During all three of our research trips we were accompanied by Mr Nur Khan of Bangladesh human rights NGO, Ain o Salish Kendra. We are extremely grateful to him for his guidance and invaluable experience, and the assistance of our translator Fahmina Rahman. We would also like to thank Mr Philip Gain for his help with photographs, reference materials, and the map of the Chittagong Hill Tracts based on the work of Dilara Hasan.



2. CONTEXT: PAHARI RESISTANCE TO POLICIES OF ASSIMILATION

“We can’t call our land our own. Everyone says that it’s the Bengali land.”

Nuichangni Marma, Khagrachari District, June 2011

This chapter briefly describes the Chittagong Hill Tracts and Pahari communities, including their traditions and social and political organization.

2.1 THE CHITTAGONG HILL TRACTS AND THE PAHARI

The Chittagong Hill Tracts in the south-eastern corner of Bangladesh covers an area of approximately 13,189km², about 10% of the total land area of the country. A geographically different and isolated part of Bangladesh, the Chittagong Hill Tracts border the Indian states of Tripura and Mizoram to the north and Myanmar to the east.

Formerly, the Chittagong Hill Tracts was a single unified district, but administrative reorganization in recent decades has led to its division into the three districts of Rangamati, Khagrachari and Bandarban, as shown above.

The Chittagong Hill Tracts differ from the rest of Bangladesh, which is flat and subject to regular monsoon flooding. They consist of several valleys running in a north-west to south-easterly direction, with ridges rising to 914 metres. These hills form part of a mountain range that stretches 1,800km from western Myanmar to the eastern Himalayas in Tibet. Scattered along this mountain range are a variety of Adivasi, that is, Indigenous Peoples. The Chittagong Hill Tracts are relatively rich in natural resources, particularly timber and bamboo, and possibilities for oil exploration have been identified. In recent years, parts of the region have been developed for pulpwood and rubber plantation by Bangladeshi companies and investors.²⁰

There are 11 different Pahari communities in the Chittagong Hill Tracts. The most numerous are the Chakma, followed by the Marma and the Tripura.²¹ The other groups are the Mru (or Mro), the Tanchainghya, the Bawm (or Bom), the Khumi, the Khyang, the Lushai (or Mizo), the Pankho and the Chak (or Sak). Customary laws and practices within these communities vary, but they share commonalities in terms of their social and political organization. They differ significantly from the majority Bangladeshi Bengali population in relation to religion (most Pahari are Buddhist whereas most Bengalis are Muslim), language, their social and

TERMINOLOGY USED IN THIS REPORT: PAHARI INDIGENOUS PEOPLES

In this report, Amnesty International uses the term *Pahari* (a Bangla term meaning “hill people”) to describe the 11 different Pahari communities in the Chittagong Hill Tracts. Amnesty International also refers to these communities as Indigenous Peoples. Both these terms are widely used by Pahari themselves at the local level. Several other terms have been used in different contexts to refer to them, including the Bengali words: *upajati* (tribals); *jumiya* and *jumma* (*jum*-cultivator); and *adivasi* (first peoples).

Following the end of British rule in 1947 when Pahari began to have closer contact with the Bengali people of the plains, organizations emerged to represent the “Hill People”, or Pahari. For example, the Pahari Chhatra Parishad (Hill Students Council) and the Pahari Gano Parishad (Hill Peoples Council) were both established in the 1960s. The “Jumma” people was the term advocated by the JSS – the party established in 1972 to lead the political struggle for local autonomy and the eventual negotiator of the Accord. “Jumma” was used by the JSS to highlight their cultural difference from the Bengalis and to provide the different communities of the Chittagong Hill Tracts with a united identity.

From the 1970s, people of the Chittagong Hill Tracts came to frequently refer to themselves as “Jumma people” or the “Jumma nation.” When the JSS political party negotiated the Accord, one of its key claims was the recognition of the Chittagong Hill Tracts as “Jummland.” But this was rejected by the government. Although “Jumma” is a popular term heard in the region, it is closely associated with the JSS. In addition to the JSS, the United Peoples Democratic Front (UPDF) political party – emerged during the negotiation of the Accord as a collective of Pahari opposed to the Accord and in particular its failure to recognize Pahari rights to autonomy. The JSS and UPDF are involved in frequent clashes.²²

Amnesty International has chosen to use the word Pahari in this report given it is not closely associated with any particular political entity in the Chittagong Hill Tracts and its frequent use by all local communities.

As noted above, Amnesty International also refers to Pahari as Indigenous Peoples and uses the international human rights standards that apply to Indigenous Peoples, including the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in 2007. The UN Declaration is the leading international normative text on Indigenous rights drafted over more than 20 years in the UN and negotiated with the effective participation of many Indigenous activists. The UN Declaration affirms, and builds upon, the fundamental human rights protections provided to all peoples under international human rights instruments. As noted by the UN Special Rapporteur on the Rights of Indigenous Peoples:²³

“The Declaration builds upon the general human rights obligations of States and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to connect to a consistent pattern of international and State practice, and hence, to that extent, they reflect customary international law.”

Under international law a key principle for identifying Indigenous Peoples is their “self-identification” as such.²⁴ The principle of “self-identification” reflects the fact that for many years Indigenous Peoples have been defined and re-defined by colonizing powers and governments.²⁵ However, the government of Bangladesh – like several other Asian states – argues that there are no “Indigenous Peoples” in Bangladesh and abstained in the UN vote on the Declaration.²⁶ The position of these states is that “Indigenous Peoples” refers to the historical experience of the “first peoples” of the Americas, and Australasia with their history of

organized colonization and settlement by foreign European powers.²⁷ However, Bangladesh accepts that there are some groups, which constitute “minorities” or “tribal peoples”. They use the term “minorities” to refer to Hindus, and Christians and the term “tribals” to specifically refer to the Pahari of the Chittagong Hill Tracts and other “tribals” of the plains.²⁸ By labelling Pahari as “tribals”, “upajati” or minorities the government seeks to avoid local application of the indigenous rights in the Declaration.

However, there are close parallels between the historical and contemporary issues experienced by Indigenous Peoples of the Americas, Australasia, Africa and Asia.²⁹ In particular, Indigenous Peoples of all regions – including Asia – have endured generations of discriminatory policies, including land alienation, established by successive governments due to their cultural difference and so-called “primitiveness” resulting in their exploitation and marginalization. Like the Indigenous Peoples of the Americas and Australasia, Pahari have sought recognition of, and remedies for, historical and ongoing injustices carried out by governments and justified in many cases on the basis of their cultural difference from the dominant cultures in the country.

In addition, as noted above, the rights set out in the Declaration are based on fundamental human rights contained in widely ratified human rights instruments, including instruments ratified by Bangladesh such as the Convention on the Elimination of All forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The Declaration makes clear that these human rights apply to indigenous peoples despite their unique systems of social and political organization, cultural practices and land tenure. For example, the Declaration recognizes that the human right to property includes Indigenous Peoples’ collective forms of traditional tenure and not only government granted private titles. Bangladesh has also ratified the ILO Indigenous and Tribal Populations Convention 1957 (ILO Convention No. 107), which guarantees the right of indigenous and tribal peoples to occupy and use their traditional lands and their right to redress in the event that land is taken from them.

political organization, marriage customs, birth and death rites, food, and agriculture techniques.³⁰ Its hilly and forested terrain is suitable for the traditional indigenous form of cultivation, known as *jum*.

According to Raja Devasish Roy, Chakma Circle Chief and Pahari barrister:

“Variants of this [jum] ancient mode of cultivation are also known as ‘slash-and-burn’ or ‘shifting’ cultivation or rotational agriculture. It involves the clearing of the ground with the cutting and burning of the vegetation (which functions as a fertilizing agent) and the sowing of multi-species seeds with the onset of the seasonal rains (April to August). No irrigation or terracing is involved. Such a form of cultivation is common in hilly and mountainous regions of northeast India and various countries of southeast Asia, Africa and Central and South America.”³¹

A traditional system of governance continues to operate alongside the state administrative structure. Under this system, the Chittagong Hill Tracts are divided into three “circles” each led by a “Circle Chief” or “Raja” – the Chakma circle, the Bomang Circle and the Mong Circle. Each circle is roughly equivalent to each district in the Chittagong Hill Tracts – the Chakma with Rangamati district, the Mong with Khagrachari and the Bomang with Bandarban district. Each circle is divided into dozens of “*mouza*” (ie, a territorial zones). There are about 380 mouza in the Chittagong Hill Tracts. Each mouza is led by a “Headman”. Mouzas are divided into several villages each led by a village “*Karbari*.” These

traditional leaders exercise jurisdiction in relation to matters of family law, lower level crimes, and allocation of customary interests in Pahari collective lands, such as the allocation of land for *jum*. Almost all of them are men.

THE “BACKWARD” INDIGENOUS PEOPLES OF ASIA

Wrongful assumptions about an inferiority and backwardness of Indigenous Peoples of Asia, as in many other countries inhabited by Indigenous Peoples, have been used to try and justify the exploitation of their resources and their marginalization by successive governments. These attitudes were bolstered by the prominent theory within the social sciences that Indigenous Peoples were primitive cultures at the earliest stage of evolution.³² These views have played an influential role in the Chittagong Hill Tracts.

From the 19th century, Pahari were studied by a host of anthropologists, who wrote about the “primitives,” “savages” and “wild hill tribes” of the Chittagong Hill Tracts. Willem van Schendel notes how these characterizations were then “superimposed on ancient South Asian conceptions of a crucial distinction between civilised society and nature.”³³ According to Schendel, this has fostered a “dominant Bengali view that assumes the Chittagong hill people to be ‘isolated remnants’ of some hoary past who have preserved their culture unchanged from time immemorial. Backward and childlike, they need to be protected, educated and disciplined by those who are more advanced socially.”³⁴ The result, Schendel notes, is a remarkably stagnant view of the Pahari out of touch with the social reality.

Even after the Accord, the preamble of the three Hill District Council Acts and the Regional Council Act of 1998 all refer to the “backward tribal people” of the Chittagong Hill Tracts.³⁵ There were echoes of these notions in interviews Amnesty International held with local government and army officials in 2011 and 2012. They spoke of the need to develop and modernize the tribals; that Pahari did not “own” land unless they held formal legal title; that *jum* cultivation was wasteful and that Paharis needed the “capacity” to come up to the “mainstream”.³⁶ Officials seemed to assume that the settlement of Bengalis in the Chittagong Hill Tracts would contribute to the cultural development of Pahari. Government statements to UN human rights bodies have noted that because Pahari “migrated from place to place” they had no rights to “substantive ownership.”³⁷ Rather, in the government’s view, they possess the more fragile and rescindable right to occupation.

BRITISH AND PAKISTANI RULE OVER THE CHITTAGONG HILL TRACTS

Pahari-Indigenous Peoples have long endured laws and policies of exploitation and exclusion established by successive colonial governments stretching back to the British-Indian administration from 1860 to 1947.³⁸ During this period the prevailing principle was that the Pahari traditional lands and natural resources were to be made productive and exploited by the British Crown.³⁹ The British declared large areas of the Chittagong Hill Tracts – about one quarter of the area – to be government-owned “forest lands” and began extracting timber, bamboo and other resources. Pahari were taxed for *jum* cultivation. High quality land was also allocated to European entrepreneurs. Paharis lived on their lands but dominion or real authority over the Chittagong Hill Tracts was with the British Crown. In effect, Pahari came to be treated as “squatters” on their own traditional lands.

When Pakistan was formed in 1947 following the partition that split British India – creating west and east Pakistan – the Chittagong Hill Tracts was “awarded” to Pakistan (as part of east Pakistan) and the exploitation of Pahari, and their lands and resources continued. Forest

resources continued to be extracted from the Chittagong Hill Tracts and Pakistan initiated major infrastructure and other projects. Between 1957 and 1963, Pakistan built the Kaptai hydro-electric dam creating a huge artificial lake over an area of 54,000 acres (218km²) – approximately 40% of all cultivable lands of Rangamati district.⁴⁰ The dam displaced around 100,000 Pahari people – more than one-quarter of the total population of the district – mostly Chakma wet-rice and *jum* cultivators.

2.2 BANGLADESH INDEPENDENCE AND PAHARI CALLS FOR AUTONOMY

With Bangladesh's independence in 1971, Pahari political leaders immediately lobbied the new government for specific recognition of their identities and autonomy in the nation's first constitution. A Pahari delegation, led by Manabendra Narayan Larma (then a member of Parliament) met with Prime Minister Sheikh Mujibur Rahman and called for regional autonomy, while remaining within the new state of Bangladesh, recognition of Pahari traditional governance arrangements, and a ban on the migration of Bengali people into the Chittagong Hill Tracts.

According to Amena Mohsin, "Mujibur [Rahman] rejected the demands, advising the Hill people to adopt the new, nationalist Bengali identity. Mujibur backed his advice with a threat to effectively marginalize Pahari by sending Bengalis into the region."⁴¹ A strong sense of Bengali identity and nationalism had driven the call for independence from west Pakistan and it formed the central platform of the constitution. There was little appreciation for the status of other ethnic groups in Bangladesh. The constitution, established in 1972, focused on a distinctive Bengali identity, language and culture. Article 9 provided:

"The unity and solidarity of the Bengali nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bengali nationalism."

The frustration of Pahari was expressed in a speech to the Bangladesh Parliament by Manabendra Narayan Larma:⁴²

"You cannot impose your national identity on others. I am a Chakma not a Bengali. I am a citizen of Bangladesh, Bangladeshi. You are also Bangladeshi but your national identity is Bengali ... They [the Pahari people] can never become Bengali."

Their ambitions thwarted, on 7 March 1972 Larma established the JSS political party. The JSS maintained the core demands of regional autonomy, and constitutional recognition of Pahari identities.⁴³ A year later the JSS's armed wing Shanti Bahini (peace force) was established, although it did not become militarily active until the mid-1970s.⁴⁴

2.3 CONFLICT IN THE CHITTAGONG HILL TRACTS: 1976-1997

From 1977, the Bangladesh army flowed into the Chittagong Hill Tracts and there were regular armed clashes with the Shanti Bahini. There followed a long period of violence and repression of Pahari. Members of the army were involved in frequent human rights violations, including massacres, which have been well documented and internationally publicized by human rights organizations, including Amnesty International.⁴⁵ These reports contained

detailed accounts of torture and killings of Pahari villagers. The Shanti Bahini also carried out a number of deliberate and arbitrary killings.

DISAPPEARED - KALPANA CHAKMA

Kalpana Chakma was the organizing secretary of the Hill Women's Federation, a Pahari women's organization. At 23 years old, she was an activist working on Indigenous rights. She was abducted from her home in Lallyagona village, Baghaichari, Rangamati district, in the early hours of 12 June 1996.⁴⁶ Her abductors were a group of plain-clothed security personnel believed to have been from the nearby Ugalchhari army camp. Kalpana Chakma and two of her brothers were forcibly taken from their home, blindfolded and with their hands tied. At some distance from the house the brothers managed to escape despite being shot at by security personnel. Kalpana has never been found. A government-appointed commission of inquiry into the case submitted a report to the government in 1996, but its findings have not been made public. Each year, Pahari women's rights activists meet on the date of her disappearance to commemorate her work and repeat their call for an independent inquiry into her "disappearance".

With the widespread violence in the Chittagong Hill Tracts, especially between 1980 and the early 1990s, tens of thousands of Pahari people sought refuge in India. Tens of thousands more were displaced within the Chittagong Hill Tracts.⁴⁷ The International Labour Organization (ILO) and UN human rights bodies, including the UN Human Rights Commission (now the UN Human Rights Council), and UN Working Group drafting the UN Declaration on the Rights of Indigenous peoples,⁴⁸ also raised their concern about the violation of human rights of Pahari.⁴⁹ The ILO sent a contact mission to the Chittagong Hill Tracts in 1985 and 1988 to inquire into "persistent reports of violent conflicts"⁵⁰ given that Bangladesh had ratified the Indigenous and Tribal Populations Convention 1957 (No. 107), which guaranteed Indigenous and tribal peoples' rights, including their right to lands.⁵¹ Government figures indicate that more than 8,500 people were killed during the insurgency. The number of civilians killed is estimated at 2,500.

A key part of the Bangladesh government's counter-insurgency strategy was to resettle hundreds of thousands of Bengalis from the Bangladesh plains into the three districts of the Chittagong Hill tracts between 1980 and 1985 under a transmigration programme facilitated by the army.⁵² The policy was not made public and no Pahari were informed of or consulted about it. As Bangladesh academic, Shapan Adnan notes, "the whole exercise was planned and executed with the precision and secrecy of a covert military operation." But the aim was "to accelerate the settlement of a sizeable Bengali population in the Chittagong Hill Tracts that could be counted upon to be loyal to the Bangladesh state." Many were placed in "cluster villages" next to army camps and became "human shields" and potential army recruits for paramilitary operations against the Shanti Bahini insurgents and the wider Pahari population.⁵³ The Bengali settlers were mostly landless families from the plains districts; some had been left homeless due to river erosion. They were promised land, food rations, cash allowances and the protection of the security forces as incentives to move. The land allotted to them included lands vacated by Pahari because of the armed conflict as well as lands held by Pahari under traditional title (for example lands vested in communities but not subject to formal legal titles).

2.4 THE CHITTAGONG HILL TRACTS PEACE ACCORD 1997

The Chittagong Hill Tracts Peace Accord (the Accord), signed in December 1997 between Sheikh Hasina's Awami League government and Santu Larma, leader of the JSS,⁵⁴ formally put a stop to the armed conflict.

Under it, the authorities agreed to establish a new system of formal governance to provide the Pahari with a measure of regional autonomy in the Chittagong Hill Tracts. Greater autonomy was one of the Pahari's key demands during negotiations. After the Accord was signed, the authorities amended legislation governing local bodies in the Chittagong Hill Tracts, establishing a system of local governance that is distinct from other districts in Bangladesh.

HILL DISTRICT COUNCILS

The new system transfers jurisdiction over a range of subjects to three "Hill District Councils" (one for each district).⁵⁵ District councils are meant to be the core authority for the day-to-day administration of the Chittagong Hill Tracts. Each of the three Hill District Councils should be headed by a "tribal" chair. There should be 30 seats in each council, 20 reserved for "tribals" and 10 for "non-tribals".⁵⁶ Of these seats, three seats are reserved for women in each of the Hill District Councils, two for "tribal" women and one for a "non-tribal" woman. The legislation establishing the Hill District Councils specifies that any "tribal" woman can be elected to the post of chair or to the general seats reserved for "tribals".⁵⁷ An umbrella body – the Regional Council – was established to supervise and coordinate the functions of the three Hill District Councils including final decision-making power in case of any conflict or lack of coordination.⁵⁸ The chair of the Regional Council must be a local "tribal" and 12 of the 22 seats are to be reserved for Pahari "tribals" plus two seats reserved for "tribal" women.⁵⁹ A separate ministry, the Ministry of Chittagong Hill Tracts Affairs was formed.⁶⁰

However, these bodies are not fully operational. Inability to agree on procedures for holding elections – especially the completion of an electoral voting list – to the Hill District Councils (who then appoint the Regional Council members) means that currently there are only five members on each of the Hill District Councils, all directly appointed by the central government.⁶¹ This undermines the effective participation of Pahari, especially Pahari women, in political life. Despite the quota for Pahari women in the legislation, currently there are no Pahari women on any of the three Hill District Councils.⁶² The delay in the voting list is due to disagreement about who should be entitled to vote in Hill District Council elections. Pahari leaders argue that the Accord only allows permanent residents who own land in the region to vote (which would include mostly Pahari), whereas government officials say that all permanent residents should vote – which would include Pahari and most Bengali settlers.⁶³ Additionally, many of the significant subjects of jurisdiction the government promised to transfer to the Hill District Councils – including land administration, and law and order – remain within the government's jurisdiction.⁶⁴ There are contested views as to the total number of subjects of jurisdiction that have been transferred to the Hill District Councils. But it is clear that the process is incomplete. According to the central government, 23 of the 32 subjects have been transferred.⁶⁵ The JSS says that only 12 have been transferred.⁶⁶ The failure to transfer control over land rights is a point of particular concern for Pahari. The JSS, and Pahari activists say that this would give them, through the Councils, greater capacity to monitor and prevent further alienation of their traditional lands in the Chittagong Hill Tracts.

As chapters 3, 4 and 5 outline in detail, many of the promises made in the Accord have not been fulfilled and the government continues to violate the human rights of Pahari. In particular the government has failed to protect Pahari-Indigenous Peoples' human rights to their traditional lands, and their right to a livelihood and culture. The delays in implementing the commitments made in the 1997 Accord – and in particular the failure to restore Pahari to their traditional lands – have been repeatedly raised by international human rights NGOs, UN human rights treaty bodies⁶⁷ and the UN Special Rapporteur on the Rights of Indigenous Peoples.⁶⁸

3. CLASHES, LAND GRABS AND EXPROPRIATION

“The fires began because of the ongoing tensions between Paharis and Bengalis, but for us the reasons were deeper, that is the construction of Bengali settlements here and pushing the Paharis into an even more marginal and vulnerable existence.”

A Pahari woman from Sajek, June 2011. Her home was destroyed in a violent clash with Bengali settlers in April 2008.

Bengali settlers have continued to flow into the Chittagong Hill Tracts and the pressure on land has remained high, particularly since the Accord was signed in 1997. This has led to an ongoing cycle of violence between Bengali settlers and Pahari villagers over access to rights to lands. Often these disputes relate to lands that have been designated “forest lands” by the government but have been occupied and used by Pahari villagers. During these incidents Pahari and Bengali settlers have been killed, and the homes of both Pahari villagers and Bengali settlers have been destroyed.⁶⁹ The army maintains a heavy presence in the Chittagong Hill Tracts and is viewed by Paharis as providing support for Bengali settlers and their continued occupation of, and encroachment on, Pahari traditional lands.

3.1 DISPUTES OVER “FOREST LAND” IN SAJEK⁷⁰

In June 2011, Amnesty International researchers visited the Sajek area in Baghaichari upazila (sub-district) in Rangamati Hill district. This is a very remote area of the Chittagong Hill Tracts close to the border of Mizoram state in India. Many Pahari have lived in this area for generations, occupying lands according to tradition but without possessing any official record of ownership. Other Pahari moved here after being displaced by the Kaptai dam or after being forced from their lands during the armed conflict. According to the government, “There is no private ownership of land in Sajek.”⁷¹ Rather, all the land of the Sajek area is a designated “Protected Forest Reserve.”

The Sajek area has been the site of two major recent clashes between Pahari villagers and Bengali settlers, one in April 2008 and another in February 2010. Lack of certainty over

rights of occupation and ownership in the area has led to tension and conflict between settlers and local Pahari.

Tensions arose in early 2008 after Bengali settlers arrived in the area and began constructing huts close to Pahari homes. Pahari villagers told Amnesty International that when they asked the settlers to leave, the settlers told them that the land was government land not Pahari land. Pahari villagers claim that the army encouraged settlers to remain in the area. Army camps are situated close to the sites of the 2008 and 2010 clashes. However, rather than providing Pahari villagers with a sense of security and preventing attacks, Pahari villagers told Amnesty International that the army aids and abets increased Bengali settlement. They say that without the army close by, Bengali settlers would not have the audacity to occupy Pahari traditional lands.

On 20 April 2008 from about 9pm until early the following morning Bengali settlers are alleged to have set fire to around 70 Pahari homes – destroying most of their contents, including cooking utensils, books, clothes and money.⁷² Several Bengali settler homes were also torched by Pahari villagers.

After the incident, many Pahari villagers took refuge in the forest.

The second clash in the Sajek area occurred on 19-20 February 2010, resulting in the death of a Pahari villager. Pahari villagers said that the clash was due to continued settlement by Bengali communities on lands occupied and used by Pahari villagers. The attacks began after Pahari protested against Bengali settlers who were erecting huts next to their settlements. The Bengali settlers then allegedly marched towards the Pahari settlements, attacking them and burning their houses.

Homes of Bengali settlers were also burned by Pahari villagers in retaliation. Some Pahari villagers claim members of the army were complicit in mounting the attack.

“The army and Bengali settlers came together,” Monibala Chakma a Pahari woman from Sajek told Amnesty International. *“Then the Bengali settlers burned our land. We had a lot of crops in our land which were all burned. Our clothes were burned. A lot of things were burned. We weren’t inside the house when it happened. We were outside and we couldn’t come in as the army was there – and the army wouldn’t let us into our house when the house was burning.”*⁷³

Another Pahari witness, Hilgabujya Chakma, said: “The army started the fires, burning Pahari homes. I saw the army burn these homes.”⁷⁴

*“When the houses were burned, the army had shot at Paharis. One woman died – the army had shot her. There was a dispute and she talked back and said why can’t we stay here, why can the settlers stay here, this is our land ... The army has their weapons but our only weapons are our two hands.”*⁷⁵

In both instances of conflict, the army provided compensation to Pahari and Bengali villagers in the form of rice and money. But some Pahari claim not to have received any compensation while others said that Bengali settlers have falsified claims in order to obtain compensation.

“We didn’t file a complaint [with the police],” said Monibala Chakma from Sajek. “The police are with the army. What’s the point? We were given 4,000 taka [US\$50] and rice for compensation.”

There has been no independent inquiry into the attacks and no one has been held to account for the violence.

When Amnesty International visited the Sajek area in 2011, the army was building a road through the area. For Pahari villagers with whom Amnesty International spoke, there was a widespread concern that the road would encourage more Bengali settlers to arrive. According to Pahlia Chingnu Marma, a Sajek villager, army road workers taunted Pahari saying: *“The settlers are coming to take your land. They are going to live here and you won’t be able to live here anymore.”*⁷⁶

Amnesty International spoke to a group of Bengali settlers about the conflict. According to Marmo, one of their representatives, 400 to 450 Bengali families moved to the Sajek area in 2008 from the Bangladesh plains in search of lands, and they occupied government “forest lands,” not Pahari lands. He said that he did not agree with the Accord, and that the government should not enter into agreements with groups within Bangladesh. In his view, Bengalis should be free to move throughout Bangladesh and members of the United Peoples Democratic Front political party were responsible for the two clashes in Sajek.

3.2 ATTACKS BY BENGALI SETTLERS AGAINST PAHARI VILLAGERS IN LONGADU⁷⁷

*“They came to basically grab our land.”*⁷⁸

Biyarwng Kwchak Tripura, Pahari villager in Longadu, February 2011

In February 2011, while Amnesty International researchers were in the Chittagong Hill Tracts carrying out interviews, there was a clash between Bengali settlers and Pahari that resulted in the burning of 23 homes of Pahari villagers – this time in an area known as Longadu upazila (sub-district) of Rangamati district. It is an area that has a history of tension. Biyarwng Kwchak Tripura, who has lived in the area for decades and was caught up in the attacks, recalled:

*“I had two plots – 5 to 6 acres – but it was occupied by Bengali settlers in 1979 during the conflict. First the government set up an army camp close by and then the settlers came and took the land. We escaped to the deep jungle by the border of India. After the Peace Accord, we came back to live near our old village and plot of land in the reserve forest land. I was hoping to get back our land. Several times I made a complaint about my land to the local officials but nothing happened. I had no record document. Now I live in the forest area.”*⁷⁹

Amnesty International researchers attempted to visit the Longadu site to interview villagers but were informed by local government officials that this would not be possible because the

CONFLICT OVER “FRINGE LAND” IN NANIACHOR⁸⁰

Cultivable land in Rangamati is so scarce that there is often conflict over the use of fringe land on the edges of the Kaptai Lake. Fringe land is land such as the estuaries of coastal areas that is covered by water periodically but can be used for cultivation. While Amnesty International delegates were in the Chittagong Hill Tracts in February 2011, there was another conflict between Pahari villagers and Bengali settlers over an area of fringe land in Naniachor Mouza, Rangamati. Amnesty International interviewed villagers caught up in the conflict about what happened.

On 13 February, Bengali settlers allegedly placed flags in an area of fringe land to mark out a place for planting rice. However, local Pahari villagers objected, saying that this was their traditional land and went to the local Hill District Council to complain. The Council called the local police and the police ordered the Bengali settlers to pull out the flags. On 28 February, the Pahari villagers went to the same plot to plant rice. 30-35 Bengali settlers arrived in a boat and began to destroy the planted rice and chased the 10-12 Pahari villagers away. The Pahari villagers again appealed to the Council and local officials who assured them that the land was theirs and they would be secure. Nevertheless, later that day Pahari villagers say that over 200 Bengali settlers arrived at the site accompanied by the army and the police. The Pahari villagers fled from the area into the forest. The area remains contested and the site of tension between Pahari villagers and local Bengali settlers and as a result Pahari are unable to safely cultivate the land due to insecurity and lack of recognition and protection of their rights in land.

area was inaccessible and dangerous for outsiders. However, researchers were able to meet with and interview Pahari villagers of Longadu in another location. The attack followed the death on 16 February of a Bengali settler who had been cutting bush in a forest area of Longadu. His body was found in the forest by his brother who assumed he had been killed by local Pahari villagers. However Pahari villagers and activists claim he had been ill and died of natural causes. There has been no independent inquiry into the cause of his death.

On 17 February 2011, allegedly over 200 Bengali settlers from local Bengali villages in Longadu upazila (sub-district) held a large rally which made its way to nearby Pahari villages carrying spears and *dao* (machetes). Pahari in these villages called the Bangladesh Border Guards' camp commander (located only a kilometre away from the Pahari villages) to say that Bengali protesters were marching towards their villages and asked him “to stop them.” They were told by the camp commander that border guards “are coming.”

The Pahari villagers fled into the neighbouring forested area. When the Bengali protesters arrived they allegedly burned 27 houses and two NGO schools. Twenty-seven Pahari families were left homeless and, fearing for their safety, remained hiding in the forest for several weeks. According to the Pahari villagers, the rally was aimed at driving them off the land and out of the area. They also claim that this is part of a continuous drive to acquire the lands they occupy and use for their livelihoods and way of life. They told Amnesty International that they are “being pushed further and further into the deep jungle.”⁸¹

Pahari political leaders and villagers claim the Bangladesh Border Guards did nothing to stop the rallies held by Bengali settlers and did nothing to stop the attack on the village, even though the army camp was close to the Pahari villages attacked and they were warned in advance of the approaching rally.

On 24 February, there was a joint meeting between representatives of the Pahari and Bengali settlers organized by local officials with the aim of making the place safe for Pahari to return to their villages. Pahari villagers eventually returned to their homes. However, nobody has been held accountable for the attacks on the village.

3.3 ARMY PRESENCE

“Army always support the Bengalis. If we ever try to speak out and protest against the Bengalis taking our land, then the army always comes and picks the Bengali side. We can’t even protest.”

Pahari villager in Lemonchuri, February 2011

To Pahari villagers and leaders with whom Amnesty International spoke, the army’s continuous and pervasive presence in the Chittagong Hill Tracts gives the impression of permanent occupation of their lands by outsiders. This is especially the case given that most members of the army and the police in the Chittagong Hill Tracts are Bengalis.⁸² As noted by barrister and Chakma Circle Chief, Raja Devasish Roy, *“We cannot forget the ethnic and religious affiliations behind the uniforms. Since all members of the army and police in the region are Bengalis, and there is Pahari-Bengali tension, there is a big risk of bias.”*⁸³

The army presence is immediately obvious to anyone travelling in the Chittagong Hill Tracts, with army camps dotted along the roads to all of the main town centres and many more scattered throughout the region. The widely held perception among the Pahari villagers and activists Amnesty International met with is that the army runs the Chittagong Hill Tracts. During Amnesty International’s visits to the Chittagong Hill Tracts, Pahari villagers and activists would often repeat the common expression that: *“the Bangladesh plains are for the Bengalis, while the Chittagong Hill Tracts are for the army.”*⁸⁴

Just prior to the 1997 Peace Accord, the Chittagong Hill Tracts remained effectively a large army camp. While negotiating with the Awami League government, the JSS political party sought the withdrawal of all security forces from the Chittagong Hill Tracts, except the Bangladesh Rifles (BDR - border guards). But the government did not agree to this. Instead, under the Accord, all temporary army camps, the Ansars (paramilitary forces) and the Village Defence Party were to be withdrawn in phases from the region. The Bangladesh Rifles, and six specified permanent army establishments or cantonments were to remain.⁸⁵

But even now – 15 years later – that remains a distant objective. The maintenance of law and order in the Chittagong Hill Tracts is still very much under army control through an administrative order called *“Operation Uttoron.”* According to the government, 200 camps have so far been withdrawn in phases since the Accord was signed.⁸⁶ However, the JSS estimates that number at around 74 out of a total of 500.⁸⁷ The most recent dismantling of camps took place in mid-2009 when 35 camps were closed down. Allegedly, however, some of these camps have been re-established or replaced by other armed forces.⁸⁸ No time limit has been specified by the government for the withdrawal of the remaining army camps, although the Accord expressly calls for a fixed deadline. Pahari political leaders, and human rights defenders, have repeatedly called for a timeline for withdrawal.⁸⁹ A report prepared by a Special Rapporteur for the UN Permanent Forum on Indigenous issues in May 2011

expressed concern at the overwhelming presence of the military in the region, and its alleged interference in civilian affairs. The Special Rapporteur recommended that all temporary army camps be withdrawn as called for in the Accord.⁹⁰

“Although it is difficult to verify the exact number of troops currently deployed in the Chittagong Hill Tracts, military officials attest to the fact that one third of the army is deployed in the region, an area which accounts for one tenth of the total territory of the country. This is an excessive amount, by any standard, especially in a country that is not participating in a war, is at peace with its neighbours and has no prevailing insurgency situation.”

UN Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997.⁹¹

The Government of Bangladesh's response was that “there are no indigenous peoples in Bangladesh” and hence the report was beyond the mandate of the UN Permanent Forum on Indigenous issues.⁹²

ILL-TREATED IN PRISON – RANG LAI MRO⁹³

Rang Lai Mro is the head of a community of Indigenous Mro people in the Chittagong Hill Tracts. He says he was arrested and detained and tortured and otherwise ill-treated by the army at the local army headquarters, Bandarban Cantonment, during the rule of the military-backed caretaker government (2007-08). He had been protesting the acquisition of Mro lands by the army in the Bandarban Hill district. He had to be treated in Bandarban General Hospital, where he says doctors found he had suffered a heart attack. Four months later he was sentenced to 17 years' imprisonment for possessing a pistol, even though his lawyers informed the court that his pistol was licensed. All charges against him were dropped in 2009. Rang Lai Mro would like to bring a civil case against the government in the courts but does not think this will deliver justice. He is seeking restoration of the land taken from his community and a commitment from the government and army that no more land will be compulsorily acquired.

3.4 LAND ACQUISITION AND FORCED EVICTIONS

Nearly one quarter of lands in the Chittagong Hill Tracts are designated by the government as “forest lands.” However, there are reports the Forest Department has been attempting to expand these areas.⁹⁴ According to a study by the Committee for the Protection of Forests and Land Rights, between 1990 and 1998, 218,000 acres of land in the Chittagong Hill Tracts were acquired by the Forest Department as Reserve Forest lands.⁹⁵ In addition, the army continues to acquire large areas for army cantonments, bases and camps.

The Chittagong Hill Tracts (Land Acquisition) Regulation 1958 (Land Acquisition Regulation) sets out how lands are to be compulsorily acquired by the government. Since 1958, the state has invoked it to acquire Pahari lands for use by the security forces, government departments and forest lands.

However, this law clearly falls short of Bangladesh's international obligations for state acquisition of lands to avoid forced evictions. Evictions may only be carried out when

LAND ACQUISITION FOR EXPANSION OF RUMA CANTONMENT

The army is seeking to expand by 9,560 acres an army cantonment in Ruma upazilla (sub-district), Bandarban, which currently covers 500 acres.⁹⁶ If successfully completed, the acquisition process will result in the eviction of 5,000 Pahari families. Local Indigenous Peoples have noted that even the 500 acres currently in the possession of the army in Ruma cantonment is not being used. During 2008 and 2009, Pahari leaders submitted petitions to the head of government appealing for cancellation of the land acquisition as it would result in the eviction of thousands of families from their lands. The land acquisition for the Ruma cantonment continues to be processed by the district administration, even though legally it requires the prior agreement of the Bandarban Hill District Council.

appropriate procedural protections are in place, including the provision of clear notice (presented in a culturally appropriate manner), and replacement lands/and or compensation provided. However, under the Land Acquisition Regulation there is no requirement to provide any notice directly to occupiers of land, and there is no provision for any appeal against land acquisition. The regulations on land acquisition also fail to comply with international standards protecting the rights of Indigenous Peoples to their traditional lands. Under international law the government is required to seek the free, prior and informed consent of Indigenous Peoples before taking their traditional lands.⁹⁷ The Land Acquisition Regulation fails to incorporate these protections. It is also inconsistent with the Chittagong Hill Tracts Hill District Councils legislation, under which “no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council.”⁹⁸

4. INDIGENOUS PEOPLES' RIGHT TO TRADITIONAL LANDS

“Under the national Constitution, the Government had the sovereign right over the ownership of the land. In the past, tribal populations that had migrated from place to place had had no substantive ownership in any area.”

Government of Bangladesh statement to the ILO, 1987.⁹⁹

When Amnesty International asked people “what is the core issue in the Chittagong Hill Tracts?” almost everyone – whether Pahari villagers, government officials, or Bengali settlers – immediately referred to the issue of land. Pahari villagers and activists frequently noted the need for an adequate land base to maintain their communities’ distinctive identities, livelihoods, way of life, and enjoyment of their human rights.

From research in the Chittagong Hill Tracts, it is clear to Amnesty International that the government of Bangladesh is failing to protect Pahari people’s fundamental human rights as Indigenous Peoples to their traditional lands. A government Task Force established under the Peace Accord estimates that over 90,000 Pahari families remain without access to their traditional lands following their large-scale displacement within the Chittagong Hill Tracts during the conflict from 1976 to 1997.¹⁰⁰ Of the Pahari families that returned from India, 9,780 families remain without land. To make matters worse for Pahari, great areas of the Chittagong Hill Tracts – nearly one quarter – have been designated as “forest land” by the government in most cases without Indigenous Peoples’ knowledge let alone informed consent.¹⁰¹ Major projects like the massive Kaptai dam have been established over Pahari traditional lands without their consent. During the conflict, lands subject to Pahari customary rights were granted to Bengali settlers.¹⁰² This is because successive governments in Bangladesh have simply assumed that all land in the area is “owned” by the state irrespective of the fact that Pahari have occupied and used the lands for generations.¹⁰³

4.1 RIGHT TO TRADITIONAL LANDS

The fact that many Pahari have no formal record of ownership of their lands means they are constantly vulnerable to dispossession by governments and private parties. However, international human rights law makes clear that Indigenous Peoples have rights to lands held according to their traditions.¹⁰⁴

“Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”

The UN Declaration on the Rights of Indigenous Peoples, Article 26(2).

“The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.”¹⁰⁵

ILO Indigenous and Tribal Populations Convention (No.107).

INTERNATIONAL HUMAN RIGHTS STANDARDS AND VIOLATIONS

The rights of Pahari-Indigenous Peoples to traditional lands, and their effective participation in decision-making are guaranteed by the ILO Convention on Indigenous and Tribal Populations No. 107 (ILO Convention 107), ratified by Bangladesh in 1972.¹⁰⁶ In addition, the UN Declaration on the Rights of Indigenous Peoples guarantees Indigenous Peoples’ human rights to traditional lands, redress, effective participation and free, prior and informed consent. These standards have also been upheld by UN human rights treaty bodies – for example, Indigenous peoples’ rights to effective participation and informed consent have been endorsed by the UN Human Rights Committee that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR, ratified by Bangladesh in 2000) and the UN Committee on the Elimination of Racial Discrimination, which monitors compliance with the Convention on the Elimination of Racial Discrimination (ratified by Bangladesh in 1979). The rights of Pahari to a livelihood and culture are affirmed by the UN Covenant on Economic, Social and Cultural Rights (ratified by Bangladesh in 1998) as well as the above Indigenous-specific instruments. Pahari under the Universal Declaration on Human Rights and ICCPR have the right to equality, life, liberty and security.

States also have an obligation to provide just and effective remedies for human rights violations, including equal and effective access to justice and adequate, effective and prompt reparation for harm suffered.¹⁰⁷ This may include elements such as restitution; public apology; compensation; satisfaction; rehabilitation of the victim, guarantees of non-repetition and changes in relevant laws and practices. More specifically in relation to Indigenous Peoples, the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 107 set out remedies that address the core issues faced by Indigenous Peoples, including redress for the taking of their traditional lands without their consent.¹⁰⁸

Governments must also establish formal mechanisms to recognize and adjudicate these rights. Indigenous peoples cannot be displaced from their traditional lands without their informed consent. These human rights are a response to states that have refused to respect Indigenous Peoples’ traditional rights to lands, including in those cases where governments assume that lands held according to custom are not “formally owned” but the property of the state. As noted above, the Bangladesh government has assumed that Pahari traditional lands are owned by the state.

Indigenous Peoples' rights to lands are protected by international law irrespective of whether the state has formally recognized these rights.¹⁰⁹ In addition, under the common law doctrine of native title – Bangladesh has its basis in the English common law – Indigenous Peoples possess proprietary rights to land they occupy traditionally.¹¹⁰ According to the doctrine of native title, the government is required to recognize and protect indigenous peoples' rights in land held according to custom. This doctrine has been upheld in common law countries in the Americas,¹¹¹ Australasia,¹¹² Africa and South Asia.¹¹³ Finally, Bangladesh is obliged under a range of human rights treaties, including the ICCPR and ICESCR, to refrain from and prevent forced evictions. If people are removed from their homes, they need to be provided with compensation for their losses, and those who cannot provide for themselves must be provided with adequate alternative housing.

“Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.”

The UN Declaration on the Rights of Indigenous Peoples, Article 20.

Indigenous peoples' dispossession from their traditional lands has major implications in terms of their access to livelihood and maintenance of their culture and way of life. A host of UN human rights treaty bodies – including the UN Committee on the Elimination of Racial Discrimination, the UN Human Rights Committee and the UN Committee on Economic Social and Cultural Rights – have repeatedly emphasized the importance of Indigenous Peoples' rights to traditional lands to maintain their livelihoods and quality of life.¹¹⁴ As noted by Erica-Irene A. Daes, the UN Special Rapporteur on Indigenous peoples and their Relationship to Land:¹¹⁵

“The long and painful history of the unjust and inhuman dispossession of indigenous peoples from their territories has resulted in many indigenous peoples having no land or resources or too little land and resources to sustain their communities and their cultures. This is by no means universally true, but for many indigenous peoples, their future will depend on acquiring the lands and resources needed for sustainable economic development and for a degree of self-sufficiency.”

Traditional economic activities such as hunting, fishing, trapping, gathering or cultivating, are clearly important to sustaining Pahari-Indigenous communities. Forested areas provide Pahari communities with timber for heating and cooking, and access to water.

“We are now left with no land to do jum (farming) and grow crops or forest to go to for collecting fuel wood, and fruits. Life has become very hard as we have army at very close proximity and I feel very insecure even walking short distances. There are checkpoints by army we have to cross if we want to travel a bit further in search of fuel etc. Our home has become an insecure unsafe place to live in. I'm now constantly worried about getting food for my family and security of my children.”

Amnesty International Interview with Monibala Chakma, in Sajek, Rangamati, June 2011.

In particular, *jum* and other forms of cultivation are critical to their livelihoods. However ultimately, Pahari seek control over their resources on their own terms free of intrusions and unwanted development.

"[T]he demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life."

The Inter-American Court of Human rights in *Yakye Axa Indigenous Community v. Paraguay*¹¹⁶

POVERTY

"Poverty is a major problem. It is very difficult. Without jum cultivation, the women have absolutely nothing. That is their entire dependency. We don't get anything from the government at all."

Amnesty International Interview with Pailha Chingnu Marma, a Pahari villager, Rangamati¹¹⁷

The government does not disaggregate the data it collects by ethnicity therefore accurate data on the socio-economic situation of the Pahari, and especially Pahari women, in the Chittagong Hill Tracts is difficult to find. Examination of the small amount of available data provides a snapshot. According to a baseline study by the UN Development Programme (UNDP) in 2009, poverty levels in the Chittagong Hill Tracts are higher than in other regions of Bangladesh and within the Chittagong Hill Tracts, poverty levels are higher among Pahari villagers than Bengalis. The average annual income of Pahari is 74% of the national average.¹¹⁸ Sixty-five percent of Pahari live below the poverty line with 44% of Pahari described as "hardcore poor".¹¹⁹

4.2 FORCED TO LIVE IN GOVERNMENT-DESIGNATED FOREST LANDS

Having been displaced from their lands, many Pahari villagers have been forced to occupy "forest lands" and are at constant risk of being evicted by the government.¹²⁰ "We are all living in forest area. There is nowhere else to go," one Pahari villager from Longadu told Amnesty International.¹²¹ According to Pahari lawyer Rajkumari Chandra Roy:

*"Although the use of and extraction from the forest and its resources is prohibited in the Reserve Forests, and is in fact penalised, the indigenous people have no alternative but to enter these forests for use and extraction to meet their domestic requirements, and in some cases for commercial purposes too."*¹²²

In 2011, Amnesty International met with Pailha Chingnu Marma and his family in the Sajek area of Rangamati on land that he thinks is government-owned reserve forest land.¹²³ He told Amnesty International that his family had been on the move for many years. For a time, to escape conflict they were living in the deep forest of the Chittagong Hill Tracts close to the border of India. Five years ago they came to Sajek to settle. He established a home and with his family has been engaged in *jum* cultivation.

While at the time of speaking to Amnesty International there were few Bengali settlers living close to his home and gardens, he expressed his concern about reports of increasing numbers of Bengalis coming to the area. The army has been building a road close to his home and he knows this means settlers will be coming soon.

“Right now there are no settlers here. It’s been two to three years since the army made the road,” said Paihla Chingnu Marma. “The Army tell me the settlers are going to come here and take my land. They are going to live here. You won’t be able to live here anymore.”

He continued: *“The only thing we are scared of is that the army is here and the settlers might come. We see the army almost every day because they are working on the roads ... There are lots of military around and they often come in and ask questions.”* He has heard about the Accord but doesn’t hold much hope of it helping him and his family.

“Our demands are not being met even though the Peace Accord was signed in 1997,” he said. “Nothing is still being done. We have been living in the ‘reserve’ (jungle/forest) area for a long time but our demands are still not being met.

“The government needs to ensure peace in the area. The government is not doing that and the settlers are not allowing us peace, they’re not letting us live in peace here. All these problems must be addressed: the problem of land, the people who have lost their land. The land must be returned to them.”

Tangrwngti Tripura, a relative of Paihla Chingnu Marma, agreed: *“If the army and the settlers don’t intervene in our business and let us be, and if our land is given back to us, those of us who have lost our land, then that would be the best thing for us.”*

4.3 LAND DEFINES CULTURE

“Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”

UN Declaration on the Rights of Indigenous Peoples, Article 8(1).

“The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately their cultural identity”.

The Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life, Article 15 (1)(a).

Access to traditional lands is also an important means of maintaining a Pahari way of life and culture in the Chittagong Hill Tracts.¹²⁴ Pahari have sought recognition of their distinctive political institutions and land rights within the state since Bangladesh’s independence. The government policy of resettling Bengalis from the plains during the armed conflict was directed at undermining Pahari institutions, culture and identity.

For Pahari who spoke to Amnesty International, a common concern was that the government and army consider that Pahari were leading an outmoded existence and needed to be

“modernized.”¹²⁵ For example, the Chair of the Chittagong Hill Tracts Land Commission told Amnesty International: “You see, these people are very simple people – the Pahari people. I have lived with them, they are my friends. They are not complicated people.”¹²⁶ These notions have deep roots in Bangladesh. As we saw in chapter 2, there is a long tradition in the Chittagong Hill Tracts of stereotyping Pahari as “backward” and “uncivilized” tribes.

Bengalis have settled in every district in the Chittagong Hill Tracts. Many Pahari believe that the Bengali are now the majority population in the area. The 1991 census showed the population of the area to be 974,447, of which 501,114 (51.4%) were Pahari.¹²⁷ In 2001, the total population of the area had swelled to 1.3 million and in 2011 to 1.5 million.¹²⁸ However, the government has not released figures disaggregated by ethnicity since 1991 so the total number of Pahari currently living in the Chittagong Hill Tracts is unknown.¹²⁹ Some Pahari believe that one reason for the government’s reluctance to publish such data is that Bengali migration to the Chittagong Hill Tracts has continued and they suspect Pahari are now a numerical minority in their own traditional lands.¹³⁰

Many Pahari villagers, activists, women human rights defenders and political leaders told Amnesty International that Bengali culture (religion, traditions and economic activities) now dominates life throughout the Chittagong Hill Tracts. For example in the towns, market stalls are mainly staffed by Bengali men, mosques issue the call to prayer across the surrounding area and the contrast in traditional modes of dress is clearly visible as Pahari and Bengali women go about their daily lives. According to Raja Devasish Roy, now “trade and commerce in the region are controlled almost exclusively by Bengali traders and merchants. Therefore the influence of the Bengali population has risen significantly over the years, commensurate to its growing numbers, economic clout, and its closer links with the social, economic and political elite in the capital city of Dhaka.”¹³¹

5. WEAK MECHANISMS, NO REDRESS

“If the army and the settlers don’t intervene in our business and let us be, and if our land is given back to those of us who have lost our land, then that would be the best thing for us”.

Tangrwngti Tripura, Sajek Union, Khagrachari, June 2011

Given the current status of Indigenous Peoples in the Chittagong Hill Tracts – absence of access to lands, and violation of right to livelihoods and culture – many repeatedly refer to the promises made in the Accord for addressing their situation, in particular promises of rehabilitation and the establishment of a Land Commission to resolve disputes over claims to lands.

5.1 TASK FORCE FAILS TO REHABILITATE REFUGEES AND INTERNALLY DISPLACED PEOPLE

The Accord requires the government to rehabilitate refugees returning from India and internally displaced people inside the Chittagong Hill Tracts.¹³² In 1998, the government established the Task Force on Refugees and Internally Displaced People (Task Force) to carry out the rehabilitation process, to provide land, housing rations and money, and prepare a survey of numbers of Pahari who were internally displaced or refugees. But today it is practically defunct. It has not met since January 2011, and has always been under-resourced.¹³³

A major reason for this inertia is controversy over a decision made by the Task Force – prompted by the Awami League government – to include Bengali settlers in the category of internally displaced people. In 2000, the Task Force compiled a list, which identified 90,208 Indigenous families and 38,156 Bengali settler families as internally displaced families and a package programme was recommended.¹³⁴ The inclusion of Bengali settlers in this list was denounced by the JSS political party and the Jumma Refugees Welfare Association – a Pahari NGO directed at the rehabilitation of Jumma refugees and internally displaced Pahari – and they boycotted subsequent meetings. The Accord refers only to the “internally displaced tribal people”.¹³⁵

Internally displaced Pahari are considered to occupy an even more precarious existence than refugees. As noted by Shapan Adnan: “While most refugees have been provided with official assistance and put up in camps set up by the [Bangladesh] government the Internally

Pahari-Indigenous Peoples have lived for generations in the lush and rolling Chittagong Hill Tracts of south-eastern Bangladesh. Their distinct culture, language and way of life are intimately connected to their land. But with Bangladeshi independence in 1971 came encroachment and moves to divest them of their traditional lands.

The Pahari's fight for autonomy and the right to their lands led to decades of armed conflict. Many Pahari were killed or displaced, and their land occupied by Bengali settlers who had been actively encouraged to move to the region by the government.

The Peace Accord of 1997 ended the conflict and promised to establish a Land Commission to resolve protracted land disputes. But 15 years on, tens of thousands of Pahari people are still landless, still waiting for the Land Commission to deal with their claims to land they say was "illegally settled" by Bengalis.

Some names have been changed to protect the identities of those who spoke to Amnesty International.

below: A Pahari woman gathers crops, Bandarban district.



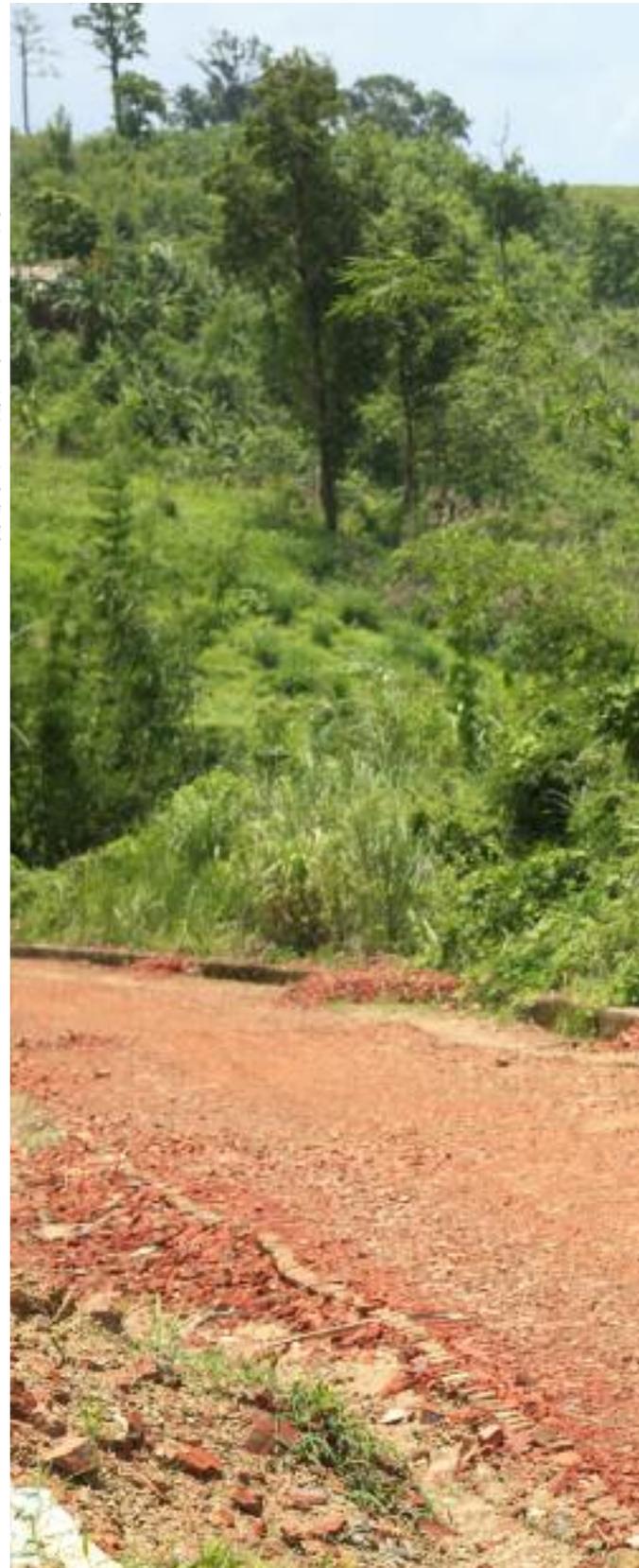
Clashes between Pahari and Bengali settlers in Sajek, a remote area in Rangamati district, took place in April 2008 and February 2010. Both times settlers burned down Pahari homes, forcing many to take refuge in the deep forest.



© Amnesty International (Photo: Amin/Drik)

above: Monibala Chakma lives with her husband and two children in Rangamati district, June 2011. She and her family survived attacks by Bengali settlers in February 2010. “The army and Bengali settlers came together,” she said. “Then the Bengali settlers burned our land.”

right: Bangladeshi army workers build a road through land that Pahari consider to be theirs. Sajek, Rangamati district, June 2011.



“The settlers are coming to take your land.”

Taunts of army road workers as recalled by a villager from Sajek,
where a new road was being built in June 2011



© Amnesty International (Photo: Anind/Dirk)

*“When the houses were burned, the
army shot at Paharis. One woman died
– the army shot her.”*





© Amnesty International (Photo: Amin/Drik)



© Amnesty International (Photo: Amin/Drik)

image and quote, left: Hilgabujya Chakma (seated) in his shop, Rangamati district, June 2011. His shop is in a village close to Sajek, where Pahari homes were burned down in a conflict with Bengali settlers in 2008 and 2010. "Pahari people got really impatient and started disputing and arguing to get land back," he said. "Whenever they did, the Bengalis [Bengali settlers] with the help of the army would hit back."

above: Marmo, a spokesperson for Bengali settlers in Sajek. Speaking to Amnesty International in June 2011, he said: "When we moved here, there were some Pahari about and we had a fairly good relationship with them... But then the United People's Democratic Front arrived and started creating tensions between Pahari and Bengali settlers." According to him, 400 to 450 families settled in Sajek in late 2008, occupying forest lands. When asked about the 2008 attack, he said: "The Pahari houses were burned and they had to flee." He had this to say about the Peace Accord: "Bangladesh is a free and whole state and we are all citizens of the country and the government cannot enter into an agreement with one particular group in the country."

“From 5am to 10am we work in the jum. From 10am to 12pm we take a break to escape the heat and then onwards we work again until 6pm.”

Tangrwngti Tripura, from Sajek, Rangamati district, describes her typical day, June 2011

© Amnesty International (Photo: Amrur/Drik)

above: The green and deceptively tranquil Chittagong Hill Tracts have been the subject of decades of conflict between Pahari and Bengali settlers.



above: A woman engaged in traditional *jum* cultivation which Pahari rely on for their livelihoods, Rangamati district.



“Until the Peace Accord is implemented, we will never have peace. There is no guarantee over our land.”

© Amnesty International (Photo: Amin/Drik)

image and quote, above: Monibala Chakma, Bangladesh, June 2011.

Displaced Peoples have been living in the remote interior of the Chittagong Hill Tracts largely in the reserve forest areas. Furthermore, they have been required to fend for themselves without the benefit of food rations, or other kinds of assistance from the state and international agencies."¹³⁶

After repatriation from India, many Pahari found their former lands occupied by Bengali settlers. Most of them received the financial assistance promised under the agreement. However, according to the JSS political party and the Jumma Refugees Welfare Association, out of a total of 12,222 families (64,609 individuals) of repatriated refugees, 9,780 families have not got back their lands and homesteads.¹³⁷ A small proportion found shelter with relatives and friends, but many refugees have been compelled to live in various makeshift dwellings with no hope of going back to their home and land.¹³⁸

NO HOME TO RETURN TO

In June 2011, Amnesty International interviewed Nuichangni Marma who lives with her husband, and three children in a village outside the Khagrachari township in the Khagrachari district.

She and several other families were originally in the Betchuri and Chimanapara areas of Rangamati but left their homes to go to Tripura in India to avoid conflict in 1986. "In our original homes, there were huge riots and massacres," she said. "Bengalis were burning our land here."

While *en route* to India the army stopped them and told them to settle in this village.

They have no documents of title. There are 108 families but only two or three have official documents of ownership.

Nuichangni Marma and other villagers went to the local government office in 1989 and 1990 and sought formal documents, with no result. When asked if they would apply to the Land Commission for ownership documents for the land, Nuichangni Marma said of course. But she was sceptical about the possibility of it being established and deeply distrustful of the army:

"Whenever there is a conflict between the Paharis and the settlers, the army always takes the side of the settlers. And if the army did not give [the settlers] some backing then they would not have the guts to harass the Pahari the way they do ... The army is meant to protect citizens but they're not protecting citizens."

5.2 THE LAND COMMISSION

"We are waiting for the Land Commission and if it doesn't work we don't know what to do."
Pahari villager, Rangamati district¹³⁹

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to

indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

The UN Declaration on the Rights of Indigenous Peoples, Article 27

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

ILO Indigenous and Tribal Populations Convention (No.107), Article 11

What is urgently needed in the Chittagong Hill Tracts is a robust mechanism to investigate land disputes in the Chittagong Hill Tracts in a manner consistent with international human rights standards. Article 27 of the Declaration requires that a process be established – with Indigenous Peoples' participation – to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands.

Given the absence of any alternative, it is clear to many Pahari that the only means to address the land claims of internally displaced Pahari and returned refugees is through a functioning, well-resourced Land Commission.

The Accord provides that a Land Commission, headed by a retired judge, be established to settle land disputes in the Chittagong Hill Tracts, including “the cancellation of ownership of those lands and hills which have been so far illegally settled and occupied.”¹⁴⁰

In 2001, the Awami League during its final days in government enacted the Chittagong Hill Tracts Land Dispute Resolution Settlement Commission Act 2001 (Land Commission Act 2001). This Act sets out in more detail than the Accord how the Commission is to function. The Land Commission is charged with the “speedy settlement of land related disputes in the Chittagong Hill Tracts.”¹⁴¹ This is to be carried out in “accordance with the existing laws and customs in the Chittagong Hill Tracts.”¹⁴²

However, 15 years after the Accord was signed and 12 years since the Land Commission Act was passed, the Land Commission has not made a single determination on a land dispute. Amnesty International's research has uncovered several reasons for this, explained below, although lack of political will on the part of successive governments has been the over-riding factor. Expectations were high among Pahari with the Awami League government's promises to take speedy steps to implement the Accord in its 2008 election manifesto. But since entering government over four years ago little has changed.

RIGHT OF INDIGENOUS PEOPLES TO CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT

The right of Indigenous Peoples to effective participation in decisions affecting them and to free, prior and informed consent reflects and seeks to remedy the many generations of Indigenous Peoples' exclusion from decisions made about them and their territorial rights. Informed consent and effective participation is therefore closely connected to their right to self-determination.

Free, prior and informed consent is a core right in the UN Declaration on the Rights of Indigenous Peoples. It is referred to in a number of contexts, including the storage of waste on indigenous lands, the drafting of legislation affecting Indigenous peoples, and any proposal to carry out projects on or to remove Indigenous Peoples from their lands. It was intended to address cases like that of the Kaptai dam that uprooted and displaced over 100,000 Pahari who were living in what became the reservoir area of the dam, between 1957 and 1963. Indigenous Peoples' right to consultation and free, prior and informed consent has been affirmed and applied by a host of international organizations¹⁴³ and international and regional human rights treaty bodies, including the UN Committee on Economic, Social and Cultural Rights,¹⁴⁴ UN Committee on the Convention on the Elimination of all forms of Racial Discrimination,¹⁴⁵ the African Commission on Human and Peoples' Rights,¹⁴⁶ the UN Human Rights Committee,¹⁴⁷ and Inter-American Court of Human Rights.¹⁴⁸

This right requires that consent be:

- **free:** that is, freely given without manipulation, coercion, threat, fear of reprisal, corruption, or inequality of bargaining power.
- **prior:** Indigenous Peoples must be given sufficient time to give their free consent to a proposed activity according to their values, tradition and circumstances.
- **informed:** there must be full, clear, objective, and culturally appropriate disclosure of a proposed activity; Indigenous Peoples must be informed of their rights (including lands, resources and traditional knowledge) and have the right to obtain independent advice. The greater the impact on the Indigenous Peoples – such as, development on traditional lands, relocation, storage of hazardous materials – the greater the onus on those proposing the activity to show that the process was robust.¹⁴⁹

Consent means the right to say no; and free, prior and informed consent may be required at different stages of a proposed activity.

Decision-making must be **inclusive** and consent should be obtained through the Peoples' chosen representative structures and decision-making processes. Therefore, decisions need to involve everyone, including women and other community members who may be marginalized within the community.

A critical aspect of free, prior and informed consent is the process leading to consent, especially the need for robust mechanisms of consultation to facilitate mutually acceptable agreements; and monitoring, enforcement and grievance mechanisms.

5.3 PAHARI DENIED RIGHT TO EFFECTIVE PARTICIPATION IN THE LAND COMMISSION

"Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures".

The UN Declaration on the Rights of Indigenous Peoples, Article 18.

"In applying [ILO Convention 107] relating to the protection and integration of the populations concerned, governments shall seek the collaboration of these populations and of their representatives".

ILO Indigenous and Tribal Populations Convention (No.107), Article 5.

Pahari activists and political leaders have objected to the fact that the Land Commission Act 2001 provides the Chairperson with ultimate say in the operations and decisions of the Land Commission.¹⁵⁰ This statute was passed during the final days of Awami League government on 12 July 2001 without adequate consultation with Pahari. The Land Commission Act requires that there be five members of the Land Commission: a retired judge of the High Court as Chairperson; the relevant Circle Chief (depending on the district under consideration); the Chair of the Chittagong Hill Tracts Regional Council (who must be an Indigenous person); the Divisional Commissioner (a senior government official); and relevant Hill District Council Chair (again, this person must be an Indigenous person).¹⁵¹ However, according to section 7(5) of the Act, "the chairman shall take decision on the basis of discussion with other members... unanimously and in case decision is not unanimous his decision shall be treated as final."

The JSS political party has been a particularly vocal critic of the chairperson's "right of veto."¹⁵² The JSS has therefore called for changes to the Act to ensure that decisions are made by at least a majority of the Land Commission members.¹⁵³

To compound matters, the Chair of the Land Commission has always been Bengali – and is always likely to be, as under the Act the position is open only to a "retired justice" of the High Court. To limit the position to a retired justice has the effect of excluding and thus discriminating against Pahari since there are no Pahari High Court judges and only a handful of Pahari barristers. Pahari human rights defenders and political leaders expressed their concern to Amnesty International about the possibility of the Chair's bias towards Bengali settlers and the potential consequences of this given the Chair's right of veto.

The former Chair, appointed from July 2009 to July 2012, adopted several decisions that have been strongly criticized by other members of the Land Commission and Pahari activists. In particular, without consulting with other Land Commission members or Pahari villagers and political leaders, soon after his appointment the Chair made a unilateral decision to conduct a land survey of the Chittagong Hill Tracts before resolving claims. This decision was widely viewed by Pahari human rights defenders, including the JSS and UPDF political parties, as undermining Pahari claims.¹⁵⁴

Any survey conducted prior to a resolution of conflicting land claims between the Pahari and Bengali settlers is widely considered by Pahari human rights defenders and political leaders to pre-empt the work of the Land Commission, which needs to first promptly inquire into and

settle land disputes and make awards.¹⁵⁵ As a Pahari human rights defender put it to Amnesty International:

“It’s a matter of putting the cart before the horse. What’s the point of a survey when we don’t know who possesses what legitimately.”¹⁵⁶

Pahari human rights defenders and the JSS and UPDF political party told Amnesty International that the survey held the possibility of shoring up and legitimizing the claims of some Bengali settlers who hold documents of ownership even though these may have been acquired illegally.¹⁵⁷ The Accord does refer to the need for a survey of the Chittagong Hill Tracts, but this is to be conducted by the government in consultation with the Regional Council (not by the Land Commission) *after* the settlement of land disputes by the Land Commission.¹⁵⁸ The Land Commission Act says nothing about the Land Commission conducting a land survey before hearing any claims to lands. The Land Commission therefore simply lacks any mandate to conduct a land survey.

Having alienated Pahari human rights defenders and political leaders, and with Pahari members of the Land Commission refusing to meet with him, the Chair issued a public call for submission of claims to lands.¹⁵⁹ This call for applications was largely boycotted by Pahari villagers. However, around 5,000 applications were received by the Land Commission, almost all of them from Bengali settlers.¹⁶⁰ Pahari political parties, and human rights activists sought the Chair’s removal from the Land Commission.¹⁶¹ His term in office came to an end in July 2012. At the time of release of this report – almost a year after the Chair’s tenure ended – the post remains vacant and there are no indications from the government as to when the post might be filled. This further reinforces to Pahari human rights defenders and political leaders that the Land Commission is a low priority for the government.

Instead of taking action on this matter, the government has publicly placed blame for the delays in the Land Commission undertaking investigation of disputes on Pahari political leaders. At the UN Permanent Forum on Indigenous issues in 2011 Bangladesh noted that the Land Commission is “stalled for non cooperation and abstention of the tribal political leaders.”¹⁶² But it is clear that the Chair’s actions and the right of veto conferred on him by the Land Commission Act 2001 have led to this deadlock.

PAHARI WOMEN EXCLUDED FROM LAND COMMISSION PROCESSES

It is essential that Pahari men *and* women with land claims have the opportunity to effectively and fully participate in the Land Commission’s processes. From the interviews Amnesty International held in the Chittagong Hill Tracts, it appears that once the Land Commission is operating many Pahari claims are likely to be advanced by Karbari or Headmen on behalf of villages or communities rather than on the basis of individual Pahari or households. As noted above, these are the traditional leaders within Pahari communities. However, very few women hold positions as Karbari or Headmen. The Land Commission therefore needs to put in place mechanisms to ensure the effective participation of Pahari women, for example by ensuring Pahari women are called to give evidence in claims and by ensuring that their testimony is given equal weight to that of men.

The rules of operation need to be framed with the effective participation of Pahari leaders and human rights defenders – both women and men – and they must include gender and

culturally sensitive working methods. Measures which might be appropriate include use of Pahari languages in dealings between Pahari claimants and the Land Commission, holding hearings of the Land Commission throughout the Chittagong Hill Tracts to reduce travelling times to attend, holding hearings at times of day convenient to Pahari villagers – for example not at times when Pahari women and men need to be undertaking *jum* cultivation or when Pahari men and women are engaged in domestic responsibilities. In addition, Pahari need to be informed of the rules of operation in clear and accessible terms.

5.4 PAHARIS DENIED RIGHT TO INFORMATION ABOUT THE LAND COMMISSION

Expert bodies of the UN and regional human rights institutions have made clear the importance to human rights of ensuring that people have access to information and can participate meaningfully in decisions that affect their rights.

It is clear to Amnesty International that the effective participation of Pahari women and men in the Land Commission's processes, requires a widespread information campaign aimed at Pahari women and men across the Chittagong Hill Tracts that explains in clear terms, and in Pahari languages, what the Land Commission does and how Pahari may submit land claims and participate in its work. The Land Commission Chair advised Amnesty International that there have been some "advertisements, leaflets and meetings" about the commission's work, but could provide no more detail.¹⁶³

However, Pahari villagers told Amnesty International these efforts have not been effective. Most Pahari men and women Amnesty International met with knew of the Accord generally and had heard that there were "problems with the Land Commission" but otherwise did not know much detail about the material aspects of the Accord or details about the Land Commission and Hill District Councils and Regional Council. Many Pahari villagers, especially women, told Amnesty International that the information they got came indirectly through Pahari leaders or NGOs. For instance, a Pahari women activist said to Amnesty International: "Common people, especially women do not get direct information [from the government]. They get it through village leaders who are mostly men, or NGOs, but they don't have access everywhere."¹⁶⁴ Amnesty International was told by NGOs and Pahari activists working on human rights about the problems they faced in trying to promote human rights in the region, including harassment by army and local government officials. Human rights activists told Amnesty International that they received anonymous threats, were followed by army intelligence officers and prevented from meeting without the presence of local government officials.¹⁶⁵ Amnesty International after speaking with scores of Pahari women and men villagers found that many are also largely unaware of their human rights, how to access relevant local and international support organizations, and how to seek remedy and reparation if these rights are violated. Amnesty International has serious concerns about the limited means available to many Pahari villagers to mount a case for the Land Commission.

5.5 LAND COMMISSION MUST RESPECT INDIGENOUS CUSTOMS AND TRADITIONS

"States shall give legal recognition and protection to [Indigenous Peoples] lands, territories and resources. Such recognition shall be conducted with due respect to the customs,

traditions and land tenure systems of the Indigenous Peoples concerned."

The UN Declaration on the Rights of Indigenous Peoples, Article 26(3).

"In defining the rights and duties of the populations concerned regard shall be had to their customary laws."

ILO Indigenous and Tribal Populations Convention (No.107), Article 7(1).¹⁶⁶

The Land Commission Act 2001 requires the Land Commission to settle land disputes "in accordance with the existing rules or laws and customs in the Chittagong Hill Tracts".¹⁶⁷ "Existing law" is defined in the Act as "any law, custom, rule, gazette in force in the Chittagong Hill Tracts immediately before the commencement of this Act."¹⁶⁸ Custom is not defined, but according to ordinary usage would mean "a way of behaving or a belief that has been established for a long time: a local/ancient custom."¹⁶⁹

It will therefore be essential for the Land Commission to determine the content of Pahari customary laws on land rights and how they will be used to resolve land disputes. Much of the evidence about existing customary law is likely to be in the oral tradition. Many Pahari villagers will be unable to produce official documents of title either because the lands were never titled (but held according to customary law, for instance, by verbal agreement with Pahari traditional leaders), or because the documents were lost during the counter-insurgency when Pahari villagers fled from the violence. It follows that Pahari villagers may need to turn to customary evidence to support their claims and it will be very difficult to restore lands to the Pahari villagers through an adjudication system based only on documentary evidence such as formal titles and other land settlement documents. It is therefore important that oral evidence and customary law be treated with respect and given due weight by the Land Commission.

To determine applicable Pahari customary laws, the Land Commission will need to impartially examine evidence from different sources. This should include traditional experts on customary laws and land rights and the Commission calling upon the expertise of traditional leaders—local Headmen and Karbari—to obtain and corroborate information. These traditional office holders are likely to have detailed records and knowledge of land rights in their respective localities which may not be available elsewhere. However, such consultations would have to be conducted with care in an open and transparent manner. There are alleged instances of Headmen and Karbari (predominantly men) being involved in the illicit transfer of rights to Pahari traditional lands either to themselves or to Bengali settlers.¹⁷⁰

IMPLICATIONS FOR PAHARI WOMEN'S RIGHTS

The Land Commission's use of customary law can have negative implications for Pahari women's rights. The predominant principle in most Pahari communities is that women are not entitled to inherit property rights in land, unless special provision is made for them by their fathers or brothers.¹⁷¹ Among some Pahari communities daughters can inherit their father's property but only if they do not have a brother. In some communities they cannot inherit at all. The only exceptions are the Marma community, where daughters inherit their mother's property and the Bomang Circle where Marma daughters inherit a quarter share of their father's property. However, relatives can put pressure on Marma women and girls not to exercise their inheritance rights.¹⁷²

Pahari women activists told Amnesty International that there is a concerted effort by Pahari women leaders and human rights defenders to review this practice and change the customary laws to enable Pahari women to inherit and formally own land. Several Pahari women activists who are engaged in this process told Amnesty International that at least one of the Circle Chiefs had agreed to change the practice but there was no definite timeframe yet. Some other details remained to be agreed, including what would happen to land inherited by a Pahari woman if she married outside her community.

Changing the inheritance practices was seen by many Pahari women activists with whom Amnesty International met as being a very important reform, given women's central role in the overall Pahari struggle for recognition of their identity and territorial rights and Pahari women's exclusion from the negotiation of the Accord. Amnesty International asked Pahari women leaders about the tension between their advocating for the Land Commission to respect Pahari customary law in deciding land disputes, and the current custom whereby Pahari women are excluded from owning land. They explained that the immediate focus had to be on getting the land back to Pahari communities, and then an internal discussion could take place about how to recognize and allocate rights within the community in a fair manner.

However, the government of Bangladesh also has obligations under international law to ensure that women, including Pahari women, enjoy rights to equality and non-discrimination. Article 46(3) of the UN Declaration on the Rights of Indigenous Peoples provides that the Declaration "shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith". Therefore Article 26(3) on recognition of Indigenous land rights conducted with "due respect to the customs, traditions" of Indigenous People should be applied consistently with other human rights. The Land Commission should ensure the customary laws it applies are consistent with Bangladesh's legal obligations on gender equality. One way of doing this could be to grant collective land title rather than granting individual titles to Pahari men. The Pahari women activists and leaders who spoke to Amnesty International emphasized that their preference was for collective claims to be made to the Land Commission and for collective ownership of land. Collective ownership is a reference to lands being vested in a village or collection of villages as opposed to individual title being vested in a single person, for example a Pahari chief or head of household. Their view was that the Land Commission's recognition of collective title would mean that there would be greater likelihood of Pahari women acquiring an interest in the land.

One Pahari woman human rights defender told Amnesty International:

"If we go in groups then we [women] will be the winners. We prefer community ownership of land because otherwise it will go to the men. It's a very critical thing because for jum land there isn't private ownership – that would be for communities. NGOs are trying to promote collective ownership."¹⁷³

Amnesty International welcomes the discussions within Pahari communities about changing customary practices relating to women's inheritance and land ownership. It is clear that the multiple layers of Pahari women's identity – as Indigenous People and as women – means that collective ownership of land is important to them; it relates to the collective relationship of Indigenous Peoples with their traditional land and to Pahari women's desire for gender

equality. Amnesty International believes it is important that the Land Commission recognize collective title for Pahari both as a means of recognizing the communal nature of Pahari communities but also to ensure Pahari women are able to claim rights to traditional lands within their communities.

5.6 EFFECTIVE REMEDIES FOR PAHARI NOT RESTORED TO THEIR TRADITIONAL LANDS

1. Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

The UN Declaration on the Rights of Indigenous Peoples, Article 28 ¹⁷⁴

When ... removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.

ILO Indigenous and Tribal Populations Convention (No.107), Article 12(2)

States must recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.

The UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 23.¹⁷⁵

It is imperative that the government engage with Pahari villagers, political leaders and human rights defenders about the provision of effective remedies for Pahari villagers unable to obtain their lands through the Land Commission. There are likely to be many cases when the Land Commission is unable to grant ownership to Pahari villagers of lands they traditionally owned. This may be due, for example, to the fact that the land is now put to another use that makes it undesirable or impracticable for it to be returned – for example the land may have been polluted or there may be infrastructure built on the land. In such cases, as noted above, under the Declaration, Indigenous Peoples have “the right to redress by means which can include restitution or, when that is not possible, just, fair and equitable compensation.”¹⁷⁶

At present, the Land Commission is not equipped to address issues of redress or compensation. It can only recognize the ownership rights of Pahari to land they used and occupied traditionally before being displaced. No provision is made for providing compensation or alternative lands in the Land Commission Act.¹⁷⁷ The Land Commission has no jurisdiction over Forest Land so there is no means of recognizing and formalizing the rights of occupation of Pahari villagers in these lands as a form of compensation. This is a

significant gap. If redress or compensation is to be provided, it would require some further political commitment on the part of the government.

EFFECTIVE REMEDIES FOR BENGALI SETTLERS

Bangladesh ratified the International Covenant on Economic, Social and Cultural Rights (the Covenant) in 1998. The Covenant prohibits forced evictions of people from their homes and lands.¹⁷⁸ A forced eviction is defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection.”¹⁷⁹

Bengali settlers are likely to be displaced if the Land Commission decides they have acquired title to lands illegally. But there may be cases where it would be equitable to provide settlers with compensation if ordered by the Land Commission to vacate lands, for instance, where a settler has acquired land in good faith without notice from a settler who acquired the land illegally.

If people are removed from their homes, they need to be provided with adequate compensation for their losses, and those who cannot provide for themselves must be provided with adequate alternative housing. During the conflict, the government of Bangladesh clearly encouraged the settlement of the Chittagong Hill Tracts by Bengali settlers. The government therefore has a responsibility to provide fair solutions for those cases where it would be equitable to provide for Bengali settlers.

CONCLUSION

The factors outlined in the above chapter point to failures on the part of the government of Bangladesh to discharge its responsibilities to ensure the full protection and recognition of the human rights of Pahari to their traditional lands; livelihood and culture; redress; effective participation; and free, prior and informed consent. In particular, it is imperative that Indigenous Peoples' claims to lands are addressed promptly as protracted delays are the root cause of many of the problems and clashes in the Chittagong Hill Tracts. Amnesty International's specific recommendations in relation to these human rights violations are outlined in chapter 6.

6. CONCLUSION AND RECOMMENDATIONS

“You see all these hills around they used to be ours but the settlers have taken them.”

Pahari villager, Lemonchuri, June 2011

From Amnesty International's research in the Chittagong Hill Tracts, it is clear that, despite repeated promises since the 1997 Peace Accord, the past and present Bangladesh governments have failed to protect Pahari people's fundamental human rights as Indigenous Peoples to traditional lands, and their right to effective participation and informed consent. In addition, there are serious questions about the government's willingness and ability to ensure accountability for crimes committed against Pahari people, including Pahari women and girls.

Amnesty International makes the following recommendations to the government, focusing on the specific steps it needs to take.

RECOMMENDATIONS

Amnesty International calls on the government of Bangladesh to:

- Respect, protect, and fulfil the right of Pahari men, women and children to life, liberty and security. In particular the government must:
 - Take preventative action to stop future clashes between Pahari and Bengali settlers.
 - Conduct thorough, impartial and transparent investigations into allegations of human rights violations and make the findings of these investigations public. This includes an investigation into the abduction of Kalpana Chakma.

- Ensure that human rights defenders, men and women, are able to carry out their peaceful and legitimate work without obstructions or intimidation and with the protection of the government.
- Fully recognize and protect the right of Pahari men and women to their traditional lands through an effective and culturally appropriate mechanism that restores them to their traditional lands. In particular, the government must ensure that:
 - It makes the effective operation of the Land Commission a top priority.
 - Pahari, including Pahari women, effectively and fully participate in its operations (that is, as members of the Land Commission and in its processes).
 - Through amendment to the Land Commission Act 2001, the Chair's veto power is removed and Land Commission decisions are reached by simple majority.
 - There is legal recognition of the collective rights of Pahari to traditional lands as a means of accommodating the communal nature of Pahari traditional land tenure practices and as a way of ensuring Pahari women are able to claim their rights to traditional land.
 - There is a culturally appropriate information campaign about the Land Commission developed with participation of Pahari, aimed at Pahari, women and men, and providing information on the human rights of Pahari.
 - It transfers management of land issues in the Chittagong Hill Tracts to the Hill District Councils.
- Consistent with international human rights law, do not take Indigenous Peoples' lands without consultation with and obtaining their free, prior and informed consent. In particular, Bangladesh must review and amend, as necessary, compulsory land acquisition laws, policies and processes that apply in the Chittagong Hill Tracts to ensure their consistency with international human rights standards.
- Provide Pahari with effective remedies in those cases where their traditional lands have been taken without their consent, and cannot be restored to them. This will require a process of providing reparations in addition to the effective functioning of the Land Commission. In addition, the government must develop solutions, including compensation on just terms, for Bengali settlers who are required to vacate lands they currently occupy in good faith.
- Recognize the right of Pahari as Indigenous Peoples to effective participation in all decisions affecting them, and to exercise their forms of autonomy. Particular attention needs to be addressed towards the effective participation of women in decisions impacting them. To this end, the government must ensure that all subjects of jurisdiction are transferred to the Hill District Councils and that it promptly engages with Pahari on the election process.

7. ENDNOTES

¹ For an overview of this history, see Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh*, Dhaka: University Press Limited, 1997 (Amena Mohsin, *The Politics of Nationalism*). See also Amena Mohsen *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series, Lynne Rienner Publishers, 2003 (Mohsin, *On the Difficult Road to Peace*).

² During the conflict human rights organizations, including Amnesty International, released regular reports, documenting large-scale human rights violations. See, for example, Amnesty International, *Bangladesh: Unlawful Killings and Torture in the Chittagong Hill Tracts* (Index: ASA 13/21/1986); and Anti-Slavery Society, *The Chittagong Hill Tracts: Militarization, Oppression and the Hill Tribes*, 1984; the Chittagong Hill Tracts Commission “Life Is Not Ours”: Land and Human Rights in the Chittagong Hill Tracts, Bangladesh (1991) and its Updates; and Julian Burger and Alan Whitaker (eds.), *The Chittagong Hill Tracts: Militarization, Oppression and the Hill Tribes* (Report No. 2), Anti-Slavery International, London (1984).

³ See, for example, Amnesty International, *Bangladesh: Unlawful Killings and Torture in the Chittagong Hill Tracts* (Index: ASA 13/21/1986).

⁴ Amnesty International Interview with the Jumma Refugees Welfare Association June 2011. See also, Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013 (JSS, *Report on the status of implementation of the Accord*), p14 (“Task Force led by Dipankar Talukdar, MP, [held on 15 May 2000] unilaterally declared 90,208 tribal families and 38,156 settler families to be internally displaced families.”)

⁵ This displacement was on top of that suffered by tens of thousands of Pahari who had crossed the border into India or scattered throughout the Chittagong Hill Tracts after they lost their land and livelihood due to the construction from 1957 to 1963 of the massive Kaptai hydro-electric dam in the Chittagong Hill Tracts.

⁶ For details of this population transfer program, see Chittagong Hill Tracts Commission, “Life Is Not Ours”: Land And Human Rights of The Indigenous Peoples Of The Chittagong Hill Tract, 1991, p58-78; Raja Devasish Roy, *The Population Transfer Programme of 1980s and the Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts*, in *LIVING ON THE EDGE: ESSAYS ON THE CHITTAGONG HILL TRACTS* (South Asia Forum for Human Rights, Subir Bhaumik et al. eds., 1997) p167-208.

⁷ Translated in English as Chittagong Hill Tracts Peoples Solidarity Association.

⁸ For a copy of the Accord, see: <http://www.mochta.gov.bd/index.php/cht-issues/peace-accord/peace-accord-english> (site last accessed on 4 June 2013).

⁹ The Accord, Clause D)(Gha) Rehabilitation, General Amnesty and other matters.

¹⁰ The Accord, Clause D)(Gha) section 4. “... this commission, in addition to settling disputes of lands of the rehabilitated tribal refugees, shall have full power for cancellation of

ownership of those lands and hills which have been so far illegally settled and occupied ... ". See also the Chittagong Hill Tracts Land Dispute Resolution Settlement Commission Act (Land Commission Act).

¹¹ The Accord, Clause D)(Gha) section 17(a).

¹² The Accord, Clause B)(Kha) 34 CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/HILL DISTRICT COUNCIL.

¹³ See for example section 6 of the Rangamati Hill District Council Act 1989.

¹⁴ The Accord Clause B)(Kha) and Clause C)(Ga).

¹⁵ Awami League Election Manifesto of 2008:

http://www.albd.org/english/index.php?option=com_content&view=article&id=177&Itemid=113

¹⁶ Ishtiaq Jamil and Pranab Kumar Panday (2008): *The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People*. Commonwealth and Comparative Politics, Vol. 46, No. 4. Page 474-475.

¹⁷ See section 6 of The Chittagong Hill Tracts Land Dispute Resolution Settlement Commission Act (Land Commission Act 2001).

¹⁸ Amnesty International Interview with chairman of the Land Commission, June 2011.

¹⁹ Amnesty International Interview with chairman of the Land Commission, June 2011.

²⁰ See Shekhar Kanti Ray and FMA Salam, Invasion of Rubber in Bandarban, *Earth Touch*, Society for Environment and Human Development, March 2010, p 25. See Philip Gain, Expansion of Reserved Forest Complicates Land Issues in the Chittagong Hill Tracts, *Investigative Reports: Environment and Human Rights*, Society for Environment and Human Development, p 267.

²¹ See Raja Devasish Roy, Case of the Chittagong Hill Tracts.

²² See for example, The Daily Star Dhaka, "4 shot dead in hills," 22 May 2011, reporting that UPDF claim the JSS shot dead 4 of their activists. See also, The Daily Star, "Santu Larma's car attacked in Rangamati" 28 December 2010 (the JSS claims UPDF carried out an attack on Larma's motorcade.) The Daily Star Dhaka, "PCJSS-UPDF clashes turn volatile" 23 January 2011 noting "recent incidents of killing and abduction, especially in the wake of violent clashes between [JSS] and [UPDF]." The Daily Star, "20 hurt in Chittagong Hill Tracts clash", 22 February 2011, noting "settlers set fire to the upazilla office of the [UPDF] during the clash."

²³ Statement of the UN Special Rapporteur on Rights of Indigenous Peoples to the UN Expert Mechanism on the Rights of indigenous peoples, 15 July 2010.

²⁴ See for example article 1(2) definition of Indigenous and tribal peoples in the ILO Convention on Indigenous and Tribal people 169.

²⁵ See for example the statements made by Pahari activists in the 1986 United Nations Working Group on Indigenous Populations at the UN, Geneva, Switzerland.

²⁶ See statement of government of Bangladesh to the United Nations Working Group on Indigenous Populations GPV/SAS.BGD/1: "It is the considered view of my delegation that in defining the indigenous populations practical insight should be derived from the historical experience in those countries where racially distinct people coming from overseas established colonies and subjugated the indigenous populations. No such situation ever existed in Bangladesh where the people coexisted through recorded history with complete communal harmony. The factual situation is that the entire population of Bangladesh falls under the category of autochthonous and should be described as such in any objective analysis." See

also the statement by the Bangladesh delegation to the 10th session of the UN Permanent Forum on Indigenous issues, 25 May 2011, New York: "... the Peace Accord has nothing to do with 'Indigenous issues' and therefore, the Government of Bangladesh reiterates its position that the Forum, which is maintained to deal with Indigenous issues, does not have locus standi in discussing the issues related to the Chittagong Hill Tracts Peace Accord." at p. 2.

²⁷ See also Benedict Kingsbury, "Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy" *American Journal of International Law*, 1998, p. 92 (Benedict Kingsbury, "A Constructivist Approach to the Asian Controversy"). See also, Kirsty Gover, and Benedict Kingsbury, "Indigenous Groups and the Politics of Recognition in Asia" *INTERNATIONAL JOURNAL OF MINORITY AND GROUP RIGHTS*, 2004, volume 11(1-2); and R.H.Barnes, Andrew Gray & Benedict Kingsbury *INDIGENOUS PEOPLES OF ASIA*, 1995.

²⁸ Pahari leaders sought unsuccessfully to receive recognition of their status as Indigenous Peoples or adivasi in recent constitutional reforms, but the constitution continues to refer to "upajati" noy Indigenous Peoples or adivasi. See,

<http://chtnewsupdate.blogspot.co.uk/2011/06/raja-devasish-roy-on-constitutional.html>

²⁹ On Asia, eg see Benedict Kingsbury, "A Constructivist Approach to the Asian Controversy" and R.H.Barnes, Andrew Gray & Benedict Kingsbury *INDIGENOUS PEOPLES OF ASIA*.

³⁰ See Raja Devasish Roy, Case of the Chittagong Hill Tracts.

³¹ See Raja Devasish Roy Challenges for "Judicial Pluralism and Customary laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh" *Arizona Journal of International and Comparative Law*, 2001, (21(1), footnote 2, p. 115 (Raja Devasish Roy, Case of the Chittagong Hill Tracts). See also Raja Devasish Roy, "Jum (Swidden) Cultivation in the Chittagong Hill Tracts", in *INDIGENOUS AFFAIRS*, 1997, NO. 1, pp. 34-37.

³² See for example Henry Maine, Henry (1861). *The Ancient Law, Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (1 ed.). London: John Murray. On the colonial era management of tribes in Africa, and Asia through the use of tradition and the tribe, see Mahmood Mamdani *Define and Rule Native as Political Identity* Harvard University Press, Cambridge, Massachusetts, London, England, 2012. On the rise of a social movement based on a re-appropriated tribal/Indigenous identity, see, R.H.Barnes, Andrew Gray & Benedict Kingsbury *INDIGENOUS PEOPLES OF ASIA*, 1995.

³³ Willem van Schendel, in *INDIGENOUS PEOPLES OF ASIA*, 1995, p. 128

³⁴ Willem van Schendel, in *INDIGENOUS PEOPLES OF ASIA*, 1995, p. 128

³⁵ See eg Rangamati Hill District Council Act 1989 first preambular para "Whereas it is expedient and necessary to enact laws to establish a Council for the overall development of Rangamati Hill District inhabited by different backward tribal people" at

<http://chtlaws.wordpress.com/category/cht-laws/rangamati-hill-district-council-act-1989-english/>.

See also, the Chittagong Hill Tracts Regional Council Act of 1998: "Whereas Chittagong Hill Tracts is a region inhabited by backward tribal people and it is necessary to adopt special measures for development of underdeveloped areas;" at

<http://chtlaws.wordpress.com/category/cht-laws/chittagong-hill-tracts-regional-council-1998-english/>.

³⁶ See for example the former Chair of the Land Commission's description of Pahari villagers as "simple" people in Amnesty International interview with the Chair, June 2011.

³⁷ See for example Observation (ILCCR) - adopted 1987, published 73rd ILC session (1987) [Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#) - Bangladesh

(Ratification: 1972)

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2554582; see also Observation (ILCCR) - adopted 1989, published 76th ILC session (1989) [Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#) - Bangladesh (Ratification: 1972).]

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2554174].

³⁸ Amena Mohsin, *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh*, Dhaka: University Press Limited, 1997 (Amena Mohsin, *The Politics of Nationalism*). See also Amena Mohsen *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series, Lynne Rienner Publishers, 2003 (Mohsin, *On the Difficult Road to Peace*).

³⁹ Willem van Schendel, in *INDIGENOUS PEOPLES OF ASIA*, 1995.

⁴⁰ Amena Mohsen *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series, Lynne Rienner Publishers, 2003, p24. Professor Amena Mohsin is professor of international relations at Dhaka University. In addition, the Karnaphuli Paper Mill (KPM) established by the Pakistan government also impacted negatively on Pahari. As noted by Philip Gain, "The KPM that became an important symbol icon of economic development for Pakistan set forth the conditions for an environmental catastrophe in the Chittagong Hill Tracts and misery for the hill people. Since its establishment the paper mill has procured millions of tons of bamboo and softwood. The bamboo and softwood from the native forests is now so decreased in the Chittagong Hill Tracts that there is perhaps no alternative to industrial plantation, which severely limits the customary land rights of the hill peoples. The construction of the KPM created 10,000 jobs, but the hill people got only around 5 per cent of these and mainly low-ranked jobs." See Philip Gain, *Expansion of Reserved Forest Complicates Land Issues in the Chittagong Hill Tracts, Investigative Reports: Environment and Human Rights*, Society for Environment and Human Development, p 409.

⁴¹ Amena Mohsin *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, p22; citing interview with "Ananta Bihari Khisha, a member of the Hill delegation who was present when Mujib made this statement."

⁴² Amena Mohsin *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*.

⁴³ Amena Mohsin *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*. As Roy notes, "peaceful demonstrations in favour of autonomy were met with police brutality. Other acts of discrimination, reminiscent of the new days of Pakistan in 1947, followed, and it came as no surprise to anyone when the hitherto peaceful struggle for autonomy turned into an armed revolt in the early 1970s." see Roy *Case of the Chittagong Hill Tracts* p. 121.

⁴⁴ Amena Mohsin *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*.

⁴⁵ Amnesty International, *Bangladesh: Unlawful Killings and Torture in the Chittagong Hill Tracts* (Index: ASA 13/21/1986). A detailed report by Amnesty International in 1986 brought to public attention a series of massacres that occurred in the spring and summer of that year. These were mostly reprisal attacks against unarmed villages for *Shanti Bahini* raids on the Bangladesh security forces, militias and Bengali settlers. Amnesty International also reported that the *Shanti Bahini* had killed Bengali in the area. The accounts given to Amnesty International showed a pattern of Bangladesh security forces, and militias raiding villages, sometimes with non-tribal Bengali villagers, forcing people to come out of homes before

firing indiscriminately, killing children and women and men, both old and young, and raping women and girls. Other accounts were of ambushes of Pahari fleeing to India to escape the violence.

⁴⁶ Amnesty International Urgent Action, ASA 13/07/96. It has been suggested that her abduction may have been linked to her support of a candidate representing the interests of indigenous people in the parliamentary elections that took place in Bangladesh on June 12.

⁴⁷ Amnesty International, *Bangladesh: Human rights in the Chittagong Hill Tracts* (Index: ASA 13/01/2000), p10.

⁴⁸ The conflict in the Chittagong Hill Tracts was raised annually in the UN Working Group on Indigenous Populations from 1982 to 1993.

⁴⁹ See eg Observation (ILCCR) - adopted 1987, published 73rd ILC session (1987)

[Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#) - Bangladesh (Ratification: 1972)

[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2554582]; see also Observation (ILCCR) - adopted 1989, published 76th ILC session (1989)

[Indigenous and Tribal Populations Convention, 1957 \(No. 107\)](#) - Bangladesh (Ratification: 1972).]

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2554174].

⁵⁰ See the reports of the ILO Committee of Experts on the Application of Conventions, 71st session 1985.

⁵¹ See the reports of the ILO Committee of Experts on the Application of Conventions during the period of conflict.

⁵² For details of this population transfer program, see CHITTAGONG HILL TRACTS COMMISSION, LIFE IS NOT OURS: LAND AND HUMAN RIGHTS OF THE INDIGENOUS PEOPLES OF THE CHITTAGONG HILL TRACT, 1991, p58-78; Raja Devasish Roy, *The Population Transfer Programme of 1980s and the Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts*, in LIVING ON THE EDGE: ESSAYS ON THE CHITTAGONG HILL TRACTS (South Asia Forum for Human Rights, Subir Bhaumik et al. eds., 1997) p167-208.

⁵³ See Shapan Adnan, *Migration Land Alienation and Ethnic Conflict, Causes of Poverty in the Chittagong Hill Tracts of Bangladesh*, Research and Advisory Services, Bangladesh, 2004, p. 29 (Shapan Adnan, *Causes of Poverty in the Chittagong Hill Tracts of Bangladesh*). See also, Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6, at para 7. Shapan Adnan and Ranajit Dastidar *Alienation of the Lands of Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh* Chittagong Hill Tracts Commission & IWGIA, 2011.

⁵⁴ Translated in English as Chittagong Hill Tracts Peoples Solidarity Association.

⁵⁵ The Chittagong hill Tracts Peace Accord of 1997 (the Accord). Clause B)(Kha) CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/Hill District Council. Article 34.

⁵⁶ Section 4 of The CHT District Council Act, 1998. See also, The Chittagong hill Tracts Peace Accord of 1997 (the Accord) Clause B)(Kha) CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/HDC. Article 4.

⁵⁷ See section 4(d) of The CHT District Council Act, 1998. See also, The Accord Clause B)(Kha) CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/HDC. Article 4(a).

⁵⁸ The CHT Regional Council Act, 1998.

⁵⁹ See section 5 of the CHT Regional Council Act. See also, The Accord, Clause C) (Ga).

⁶⁰ The Accord provides for the establishment of a Ministry of CHT Affairs (MICHITA) to function as an apex body with supervisory and executive authority over the system of autonomous rule. Its power and authority includes the following: (i) the residual jurisdiction of the Government to legislate on CHT matters; (ii) revisional authority over the functions of the Hill District Councils, the district administrations headed by the Deputy Commissioners, and the Regional Council; and (iii) allocation of funds for the Hill District Councils and the Regional Council. The ministry has a number of departments, including a section devoted to legal matters and a section for developmental issues. It is to be headed by an indigenous person, and is to involve the participation of the CHT MPs, the traditional chiefs, a representative of the Regional Council, the three Hill District Council chairpersons, and three non-tribal CHT residents to be nominated by the Government as advisers.

⁶¹ See Bangladesh Mission New York, "Implementation Status of Chittagong Hill Tracts Peace Accord of 1997," 24 May 2011: "chairman [of the Regional Council] along with members of the Regional Council are still functioning on an ad hoc basis since the election could not be held yet." See also the Daily Star Dhaka, "For Lasting Peace in the Chittagong Hill Tracts: Fresh resolve to implement the Accord is not enough, new initiative imperative." 5 December 2010, noting "... the first step on the part of the government will be to empower the indigenous people by vesting in their local representatives the power to administer their day to day affairs through holding elections for the district councils and the regional council. These are at present being run by nominated representatives which takes away from the true representative character of the bodies."

⁶² List of current members of Hill District Councils supplied to Amnesty International in March 2013.

⁶³ See, Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6, at para 29.

⁶⁴ Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013 (JSS, *Report on the status of implementation of the Accord*).

⁶⁵ See the Bangladesh Human National report to Human Rights Council Working Group on the Universal Periodic Review Sixteenth session Geneva, 22 April-3 May 2013, A/HRC/WG.6/16/BGD/ 1, 7 February 2013, para 110.

⁶⁶ JSS, *Report on the status of implementation of the Accord*, p. 36. See also Kapaeng Foundation Human rights Report 2011 on indigenous peoples in Bangladesh 1 January 2012, p 215.

⁶⁷ In 2001, CERD was concerned about the slow progress in implementing the Chittagong Hill Tracts Peace Accord and urged Bangladesh to intensify its efforts in this regard. CERD/C/304/Add.118, para 10.124.

⁶⁸ In 2008, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a joint communication calling the attention of the Government to the alleged illegal seizure of the traditional lands of indigenous communities in the Chittagong Hill Tracts. Concern was expressed that these cases may be part of a systematic campaign to support the settlement of non-indigenous families in the Chittagong Hill Tracts, with the active support of the security forces, with the ultimate aim of displacing

the indigenous community. 126 See A/HRC/9/9/Add.1, para. 50.

⁶⁹ See also Amnesty International's PUBLIC STATEMENT *Indigenous land dispute turns deadly in Bangladesh* (AI Index: ASA 13/003/2011).

⁷⁰ The information in this case study is based on interviews conducted by Amnesty International in June 2011. See also, Amnesty International PUBLIC STATEMENT Bangladesh: Investigate army's alleged involvement in human rights abuses in Chittagong Hill Tracts (AI Index: ASA 13/006/2010). See also, Chittagong Hill Tracts Commission, Memorandum to Prime Minister, "Urgent demand for investigation into arson attack and alleged killings in Sajek", 22 February 2010. See also, IWGIA, Organising Committee CHT Campaign and Shimin Gaikou Centre, Militarization in the Chittagong Hill Tracts, Bangladesh – The Slow Demise of the Region's Indigenous Peoples, IWGIA, May 2012 (IWGIA, Militarization in the Chittagong Hill Tracts).

⁷¹ See UN Special Rapporteur on the Rights of Indigenous Peoples report noting the Government of Bangladesh response to the Sajek conflict in letters to him of 6 April and 18 May 2010.

⁷² See AITPN. SAJEK: BURNT TO ASHES Emblematic of Bangladesh's policy towards indigenous Jumma peoples, p.6.

⁷³ Amnesty International, Interview with "Monibala Chakma" (not her real name) from Baghaihat area, June 2011.

⁷⁴ Amnesty International, Interview with "Hilgabujya Chakma" (not his real name) from Baghaihat area, June 2011.

⁷⁵ Amnesty International, Interview with "Hilgabujya Chakma" (not his real name) from Baghaihat area, June 2011.

⁷⁶ Amnesty International, Interview with "Paihla Chingnu Marma" (not his real name) from Baghaihat area, June 2011.

⁷⁷ This case study is based on Interview with villagers in March 2011, 1005. See also http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=9023:bangladesh-statement-by-bihr-gravely-concerned-about-the-massive-communal-attack-on-jumma-villages-by-bengali-settlers&catid=33:centeral-asia-indigenous-peoples&Itemid=66; See also New Age, "Ethnic minority village attacked in Rangamati," 18 February 2011; and New Age, "Rangamati arson attack betrays Bengali chauvinism," 19 February 2011.

⁷⁸ Amnesty International, Interview with villagers from Longadu upazila, February 2011 (Interview with Longadu villagers).

⁷⁹ Amnesty International, Interview with "Biyarwng Kwchak Tripura" (not his real name) from Longadu, February 2011.

⁸⁰ Amnesty International, Interview with villagers from Naniachor Mouza, Rangamati, February 2011.

⁸¹ Above, Interview with Longadu villagers. Both the JSS and UPDF political parties said Bengali settlers in the ... area had long been attempting to grab lands of the Hill people. See above, New Age, "Ethnic minority village attacked in Rangamati." Both parties held protests in the Chittagong Hill Tracts and Dhaka demanding the immediate arrest of the attackers. New Age "UPDF calls half day strike at Rangamati," 19 February 2011.

⁸² According to a report by IWGIA et al, "Close to 100% of the army and other security personnel in the CHT are ethnically Bengali, and the vast majority of them are adherents of Islam." See, IWGIA, Organising Committee CHT Campaign and Shimin Gaikou Centre, Militarization in the Chittagong Hill Tracts, Bangladesh – The Slow Demise of the Region's

Indigenous Peoples, IWGIA, May 2012 (IWGIA, Militarization in the Chittagong Hill Tracts).

⁸³ Raja Devasish Roy, in the Daily Star (2 April 2010) quoted in *Burnt to Ashes* p 125.

⁸⁴ Amnesty International first heard this expression in an interview with an experienced human rights activist in Dhaka, June 2011.

⁸⁵ The Accord, Clause D (Gha) REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS 17. a) After signing of the agreement between the government and the Jana Sanghati Samiti and immediately after the return of the JSS members to normal life, all the temporary camps of military, Ansar and Village Defence Party shall be taken back to permanent installations except the border security force (BDR) and permanent cantonments (three at the three District Headquarters and Alikadam, Ruma and Dighinala) by phases and with this in view, the time limit shall be determined. In case of deterioration of the law and order situation, natural calamity and such other works the army can be deployed under the civil administration like all other parts of the country as per relevant laws and rules. In this case, the Regional Council may, according to the necessity or time, request the proper authority for the purpose of getting assistance. b) The lands of camps and cantonments to be abandoned by military or para-military forces shall be either returned to the original owners or to the Hill District Councils.

⁸⁶ According to a report by IWGIA, "Although it is difficult to verify the exact number of troops currently deployed in the CHT, military officials attest to the fact that one-third of the entire Bangladesh army is deployed in the Chittagong Hill Tracts." See, IWGIA, Organising Committee CHT Campaign and Shimin Gaikou Centre, *Militarization in the Chittagong Hill Tracts, Bangladesh – The Slow Demise of the Region's Indigenous Peoples*, IWGIA, May 2012 (IWGIA, Militarization in the Chittagong Hill Tracts).

⁸⁷ Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013, p. 48-52.

⁸⁸ Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013, p. 65.

⁸⁹ The JSS has repeatedly called for the removal of all temporary army camps, see The Daily Star, *Implement Chittagong Hill Tracts accord fully demands PCJSS: leaders pay tribute to MN Larma* 11 November 2010. "[The JSS] strongly urged the present government to withdraw all remaining temporary security camps from the Chittagong Hill Tracts for the interest of full implementation of the Chittagong Hill Tracts Accord." See also, New Age, Bangladesh. "Post-Treaty Chittagong Hill Tracts situation warrants no military operation: Devashish", 2010, noting "... the state continues to view the situation in the Chittagong Hill Tracts from security perspective and prefers to continue counter-insurgency operations there. The home and defence ministries know it well that the law and order in the hills is no different than that in the plains [of Bangladesh]."

⁹⁰ See, Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6.

⁹¹ See, Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6, at para 50.

⁹² See the statement by the Bangladesh delegation to the 10th session of the UN Permanent Forum on Indigenous issues, 25 May 2011, New York: "... the Peace Accord has nothing to do with 'Indigenous issues' and therefore, the Government of Bangladesh reiterates its position that the Forum, which is maintained to deal with Indigenous issues, does not have

locus standi in discussing the issues related to the Chittagong Hill Tracts Peace Accord.” at p. 2.

⁹³ Amnesty International, Interview with Ranglai Mro, June 2011. See also, Amnesty International Further information on medical concern/torture/legal concern: Rang Lai Mro (m), AI Index: ASA 13/010/2008, 28 November 2008.

⁹⁴ See for example, New Age, Bangladesh, “Hill people resent government land acquisition move,” 29 December 2010, noting concern by Hill people of six mauzas in Khagrachari over forest department plan to declare thousands of acres reserve forest land at Dinghala, Khagrachari.

⁹⁵ See Memorandum submitted to the Ministry of Environment and Forests signed by 163 Pahari dated 2010. See Philip Gain, Expansion of Reserved Forest Complicates Land Issues in the Chittagong Hill Tracts, *Investigative Reports: Environment and Human Rights*, Society for Environment and Human Development, p 267. See Shapan Adnan and Ranajit Dastidar *Alienation of the Lands of Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh* Chittagong Hill Tracts Commission & IWGIA, 2011, p. 40.

⁹⁶ See Shapan Adnan and Ranajit Dastidar *Alienation of the Lands of Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh* Chittagong Hill Tracts Commission & IWGIA, 2011, p. 40. See also, IWGIA, Militarization in the Chittagong Hill Tracts, p. 32.

⁹⁷ See chapter 4 below on international human rights standards.

⁹⁸ Section 64 of the HDC Act. B) (Kha) 26 CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/ HILL DISTRICT COUNCIL, 26. Section 64 shall be amended as follows: a) Notwithstanding anything contained in any law for the time being in force, no land, including those land suitable for giving settlement, within the boundaries of Hill District shall be given in settlement including giving lease, purchased, sold and transferred without prior approval of the Council; provided that this provision shall not be applicable in case of areas within the reserved forests, Kaptai Hydroelectricity Project, Bethunia Earth Satellite Station, State-owned industries and factories and lands recorded in the name of government. b) Notwithstanding anything contained in any law for the being in force, no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council.

⁹⁹ See Observation (ILCCR) - adopted 1987, published 73rd ILC session (1097).

¹⁰⁰ Amnesty International Interview with the Jumma Refugees Welfare Association June 2011. See also, Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013 (JSS, *Report on the status of implementation of the Accord*), 14 (“Task Force led by Dipankar Talukdar, MP, [held on 15 May 2000] unilaterally declared 90,208 tribal families and 38,156 settler families to be internally displaced families.”)

¹⁰¹ See Devasish Roy in Resisting Onslaught on Forest Commons in Post-Accord Chittagong Hill Tracts in Naeem Mohaiemen (ed) *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism*, Dhaka, 2010, p 192-193 (Between Ashes and Hope); see also, Philip Gain in Reserve Forests Complicate Land Issues in Between Ashes and Hope.

¹⁰² See for example, Shapan Adnan, *Causes of Poverty in the Chittagong Hill Tracts of Bangladesh* p. 51: “the administration also found it convenient to assert that the common jum and forest lands of the Hill people were khas or USF lands owned by the state, on which it had the right to provide allotments to settlers.”

¹⁰³ As noted in Chapter 2, major projects have been established that have involved the taking of large tracts of lands and natural resources without the informed consent of Pahari. The Kaptai dam for example resulted in a major area of the Rangamati district being submerged and lost to Pahari.

¹⁰⁴ See I/A HR Court, *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001) (Case of The Mayagna (Sumo) Awas Tingni Community). See also Special Rapporteur on Rights of Indigenous Peoples: "According to the international normative consensus, the right of Indigenous Peoples to lands, territories and natural resources originates in their own customary law, values, habits and customs and, therefore, is prior to and independent of State recognition in the form of an official property title." A/HRC/15/37, at para 54.

¹⁰⁵ When the convention was being drafted, one of the most critical problems identified by the ILO was "the protection of the rights of Indigenous Peoples with respect to the ownership and use of the lands they occupy and to the economic development of these lands." See The ILO, *Living and working conditions of Indigenous populations in independent countries*, Report VIII (1), International Labour Conference, 39th session, Geneva, 1956.

¹⁰⁶ ILO Convention 107 is set within an integrationist frame – it was promulgated in 1956 when the dominant ethos was the assimilation of indigenous peoples. But it still contains rights to lands, consultation and a range of economic, social and cultural rights (eg health and social security). The ILO monitoring bodies – the ILO Committee of Experts and Committee on the Application of Standards (CEACR) – have steadily distanced themselves from the theme of integration when interpreting and applying Convention No. 107. This shift can be seen in relation to the observations to India of the CEACR on the Sardvar Hydro Project, where the CEACR has consistently argued that land rights are essential to the viability of Indian tribal communities and not simply a temporary measure before their integration into the national community. See CEACR, *Individual Observation concerning Convention No. 107, India*, 1988.

¹⁰⁷ See ICCPR, art 2 ICESCR; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. General Assembly resolution 60/147 of 16 December 2005.

¹⁰⁸ See Article 27 of the UN Declaration on the Rights of Indigenous peoples and Article 12 of ILO Convention 107, which calls for replacement lands and compensation for removal from traditional lands without their free consent.

¹⁰⁹ See, the Case of The Mayagna (Sumo) Awas Tingni Community.

¹¹⁰ See the Australian High Court decision of *Mabo v. Queensland (No.2)*, (1992) 175 C.L.R. 1 which ruled that native title survived the assertion of British sovereignty over Australia and continued until such time as it was lawfully extinguished.

¹¹¹ See, *Aurelio Cal et al v Attorney-General of Belize* (2007) 71 WIR 110. In the United States see, *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1 (1831).

¹¹² See *Mabo v. Queensland (No.2)*, (1992) 175 C.L.R. 1 in Australia and *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 in New Zealand.

¹¹³ See the Malaysian decision of *Kerajaan Negeri Selangor and others v Sagong Bin Tasi and others* (2005) MLJ 289.

¹¹⁴ See UN Committee on the Elimination of Racial Discrimination, "General Recommendation 23: Indigenous Peoples" (18 August 1997) A/52/18, annex V, Para 5:

calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources ...'. See the Human rights Committee's General Comment No. 23: The rights of minorities (Art. 27): 04/08/1994. CCPR/C/21/Rev.1/Add.5, para 7: "With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law." In addition, the U.N. Committee on Economic Social and Cultural Rights has recognized the need for secure rights to traditional land in order to ensure the that indigenous way of life is maintained. Comm. on Econ., Soc. & Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: India, P 44, U.N. Doc. E/C.12/IND/CO/5 (May 10, 2008); Comm. on Econ., Soc. & Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: Bolivia, PP 23, 36, U.N. Doc. E/C.12/BOL/CO/5 (Aug. 8, 2008); Comm. on Econ., Soc. & Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 6 and 17 of the Covenant: Kenya, PP 12, 31, U.N. Doc. E/C.12/KEN/CO/1 (Dec. 1, 2008). International treaty body jurisprudence recognizes the centrality of Indigenous peoples' ownership of, access to and control over their lands, territories and resources to their economic survival. In the Saramaka case, the Inter-American court noted that "the very physical and cultural survival" of Indigenous peoples is often at stake when their rights to their lands territories and resources are not adequately protected. The court stated that "due to the inextricable connection members of indigenous and tribal peoples have with their territory, the protection of their right to property over such territory ... is necessary to guarantee their very survival." See also the Case of the Indigenous Community Yakye Axa, para. 137; see also the Case of The Mayagna (Sumo) Awas Tingni Community, paras. 148-149, and 151. See, also Inter-American Commission on Human Rights, Report 75/02, Case 11.140. Mary and Carrie Dann. United States, December 27, 2002, para. 128 (observing that "continued utilization of traditional collective systems for the control and use of territory are in many instances essential to the individual and collective well-being, and indeed the survival of, indigenous peoples"), and Inter-American Commission on Human Rights, Report 40/04, Merits. Case 12.052.

¹¹⁵ See Erica-Irene A. Daes, *Indigenous Peoples and Their Relationship to Land*, para 56.

¹¹⁶ *Yakye Axa Indigenous Community v. Paraguay*, Series C (No. 125) (2005).

¹¹⁷ Interview with Amnesty International, June 2011.

¹¹⁸ See Socio-Economic Baseline Survey of Chittagong Hill Tracts, UNDP, 2009. Percentage is calculated from figures given on p. v of UNDP baseline survey.

¹¹⁹ Socio-Economic Baseline Survey of Chittagong Hill Tracts, UNDP, 2009. p. vi-vii.

¹²⁰ See, Shapan Adnan, *Causes of Poverty in the Chittagong Hill Tracts of Bangladesh* p. 54: "While such IDPs are to be found scattered all over the Chittagong Hill Tracts, a significant section has sought refuge in the relatively inaccessible tracts of the Kassalong and Reinkhyong Reserve Forests. Permanent and semi-permanent habitations have been set up within these reserve forest areas, and available lands have been utilized for cultivation, subsuming jum on hill-slopes and wet-rice on river banks."

¹²¹ Amnesty International Interview with Pahari villager from Longadu, February 2011.

¹²² See, Rajkumari Chandra Roy, *Land Rights of the Indigenous peoples of the Chittagong*

Hill Tracts, Bangladesh, in IWGIA Doc. No. 99-179 (2000).

¹²³ See Amnesty International interview with Paihla Chingnu Marma, June 2011.

¹²⁴ *Committee on Economic, Social and Cultural Rights General comment No. 21 Right of everyone to take part in cultural life Forty-third session 2–20 November 2009 E/C.12/GC/21, para 36*: “Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.”

¹²⁵ Amnesty International Interview with officials in June 2012, Bandarban.

¹²⁶ Amnesty International Interview with Chairman of the Chittagong Hill Tracts Land Commission June 2011.

¹²⁷ Ministry of Chittagong Hill Tracts Affairs. 1991 census figures,
<http://www.mochta.gov.bd/>

¹²⁸ Bangladesh Bureau of Statistics figures for the Chittagong Hill Tracts districts of Bandarban

<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Census2011/Chittagong/Bandarban/Bandarban%20at%20a%20glance.pdf>, Khagrachuri

<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Census2011/Chittagong/Khagrachuri/Khagrachuri%20at%20a%20glance.pdf> and Rangamati

<http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Census2011/Chittagong/Rangamati/Rangamati%20at%20a%20glance.pdf>.

¹²⁹ The 2011 national census included a question on ethnicity and the Government published figures showing the overall ‘ethnic population’ of the whole country was 1,586,141 or 1.1% of the total population. However, the figures are not available for each district. See:

http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Census2011/Bangladesh_glance.pdf.

¹³⁰ Interviews with Amnesty International March 2011 and June 2012.

¹³¹ See Raja Devasish Roy, *Case of the Chittagong Hill Tracts*, p.117.

¹³² The Accord, Clause D)(Gha) Rehabilitation, General Amnesty and other matters.

¹³³ Amnesty International Interview with the Jumma Refugees Welfare Association June 2011.

¹³⁴ Amnesty International Interview with the Jumma Refugees Welfare Association June 2011. See also, Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013 (JSS, *Report on the status of implementation of the Accord*), 14 (“Task Force led by Dipankar Talukdar, MP, [held on 15 May 2000] unilaterally declared 90,208 tribal families and 38,156 settler families to be internally displaced families.”)

¹³⁵ See The Accord, Clause D)(Gha). REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS 1 ... The Task Force shall, after determination, rehabilitate the internally displaced tribal people of three districts. 2. After signing and implementation of the agreement between the government and the Jana Sanghati Samiti, and after rehabilitation of the tribal refugees and internally displaced tribal people.

¹³⁶ Shapan Adnan, *Causes of Poverty in the Chittagong Hill Tracts of Bangladesh*, p. 168.

¹³⁷ See Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013 (JSS, *Report on the status of implementation of the*

Accord), 49.

¹³⁸ Shapan Adnan, *Causes of Poverty in the Chittagong Hill Tracts of Bangladesh*, p. 167.

¹³⁹ See Amnesty International interview June 2011. 1005 1.33min

¹⁴⁰ The Accord, Clause D) (Gha) REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS 4. A commission (Land Commission) headed by a retired justice shall be formed for settling land disputes. This commission, in addition to settling disputes of lands of the rehabilitated tribal refugees, shall have full power for cancellation of ownership of those lands and hills which have been so far illegally settled and occupied. No appeal can be made against the judgement of this commission and decision of this commission shall be final. This shall also be applicable in case of fringe land. See also, Section 6 the Land Commission Act 2001. Disputes are to be settled according to “the existing rules, customs and practices” of the Chittagong Hill Tracts.

¹⁴¹ See the preamble of the Land Commission Act 2001.

¹⁴² Section 6(1)(a) of the Land Commission Act. <http://pcjss-cht.org/CHT%20Acts%20&%20Laws/CHT%20Land%20Dispute%20Settlement%20Commission%20Act%202001.pdf>

¹⁴³ See The UN Development Programme and Indigenous Peoples: A policy of engagement (2001). “Consistent with United Nations conventions such as ILO Convention 169, UNDP promotes and supports the right of indigenous peoples to free, prior informed consent with regard to development planning and programming that may affect them.” at para 28, page 7. See also the guidelines on indigenous peoples’ issues developed by the United Nations Development Group which also recognize informed consent and self-determination etc. See also FAO Policy on Indigenous and Tribal peoples: “FAO’s objectives for engagement with indigenous peoples are formulated in light of its expertise and in recognition of the rights to which indigenous peoples are entitled under international law. Consultation and free, prior and informed consent will be sought when FAO projects directly affect indigenous peoples.” at p 14.

¹⁴⁴ Committee on Economic, Social and Cultural Rights General comment No. 21 Right of everyone to take part in cultural life Forty-third session 2–20 November 2009 E/C.12/GC/21, para 36.

¹⁴⁵ UN Committee on the Elimination of Racial Discrimination, “General Recommendation XXIII: Indigenous Peoples” (18 August 1997) A/52/18, annex V, Para 5.

¹⁴⁶ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*. 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010, available at: <http://www.unhcr.org/refworld/docid/4b8275a12.html> [accessed 11 April 2013].

¹⁴⁷ UN Human Rights Committee, Ángela Poma Poma 27/3/2009, Communication No. 1457/2006.

¹⁴⁸ *Saramaka People v. Suriname*, Series C (No. 172) (2007).

¹⁴⁹ *Saramaka People v. Suriname*, Series C (No. 172) (2007).

¹⁵⁰ See section 7(5) of Land Commission Act 2001: “the chairman shall take decision on the basis of discussion with other members ... unanimously and in case decision is not unanimous his decision shall be treated as final.” See also, Parbatya Chhattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013.

¹⁵¹ All of these positions are currently held by men, totally excluding women from the Land

Commission.

¹⁵² Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013. See also, the criticism of the UPDF: NEW AGE, Chittagong Hill Tracts Land Commission begins hearing Monday amid protests, 26 December 2010 (calling for amendment to the Land Commission Act since “it invests the chairman with absolute authority to decide everything without taking majority opinion into account” and calling for “carrying out a cadastral survey only after resolving all disputes.”).

¹⁵³ Parbatya Chattagram Jana Samhati Samiti *Report on the status of implementation of the Chittagong hill Tracts Accord*, 2013. See also the 13-point proposal by the Chittagong Hill Tracts Regional Council and Ministry of Chittagong Hill Tracts Affairs for amendment of CHT Land Dispute Resolution Commission Act of 2001 adopted in the Inter-ministerial Meeting held on 30 July 2012 with the Law Minister in the chair.

¹⁵⁴ See, for example, New Age, Bangladesh, “UPDF demands Chittagong Hill Tracts Land Commission act amendment”, 2010. Noting UPDF “demanded conducting a cadastral survey only after resolution of land disputes ...” and that the Land Commission Act be amended to “introduce democratic decision making processes.”

¹⁵⁵ See, UN Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6, at para 35.

¹⁵⁶ Interview with Amnesty International, March 2012.

¹⁵⁷ Bengali settler organizations on the other hand have called for the survey: See New Age, Bangladesh. “Chittagong Hill Tracts land issue cannot be resolved without cadastral survey: Ibrahim” noting call by Bangladesh Kalyan Party Chairman for a survey at a conference organized by Parbatya Bangali Chhatra Parishad (a students group of Bengali settlers in the hills) “moves for a survey were taken in the past but no survey could be carried out amid obstruction by some opportunistic tribal leaders.” 31 December 2010. As Professor Shapan Adnan notes: “a cadastral survey could provide them [Bengali settlers] with the opportunity to ‘clean up’ their titling documents before submitting their cases for judgement by the Land Commission tribunal. In effect, holding of the survey before the resolution of land disputes held the possibility of legitimizing illegal occupation of Indigenous Peoples lands by Bengali settlers.” See, Shapan Adnan and Ranajit Dastidar *Alienation of the Lands of Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh* Chittagong Hill Tracts Commission & IWGIA, 2011, pp. 16-17.

¹⁵⁸ See The Accord Clause D) (Gha) 2: “the government ... shall start cadastral survey in CHT as soon as possible and after finalization of land ownership of tribal people by settlement of land dispute through proper verification.” REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS “ ... the government, in consultation with the Regional Council to be formed as per this agreement, shall start cadastral survey in CHT ... ”.

¹⁵⁹ See, Permanent Forum on Indigenous issues Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 Submitted by the Special Rapporteur, E/C.19/2011/6, at para 36. See, also, The Daily Star, “Chittagong Hill Tracts land ownership: Application submission deadline extended,” October 2010 noting the Land Commission nominated 21 October 2010 as the last day it would accept applications for ownership.

¹⁶⁰ Amnesty International interview with Chair of the Land Commission, March 2012.

¹⁶¹ See The Daily Star, “Remove justice Khadem as Land Commission chief: PCJSS” 26 December 2010. See also New Age Bangladesh “Rights Activists want Chittagong Hill Tracts

Land Commission to go," 24 December 2010, reporting on a meeting of the Chittagong Hill Tracts Civil Society, Kapaeeng Foundation, Khagrachari District Headman's Association, and Chittagong Hill Tracts Forest and Land Rights Preservation movement" who criticize the chair for "making decisions unilaterally without the taking the opinions of others on the commission" and call for the chair's resignation and amendment to the Land Commission Act. The Daily Star "Remove Chittagong Hill Tracts Land Commission chief" 26 January 2011, noting JSS call for the immediate removal of the chair.

¹⁶² See the statement by the Bangladesh delegation to the 10th session of the UN PFII, 25 May 2011, New York.

¹⁶³ Amnesty International Interview with Land Commission chair, June 2011.

¹⁶⁴ Amnesty International Interview with Land Commission chair, June 2011.

¹⁶⁵ For example, in November 2011, the CHT Commission conducted a mission to all three districts of the CHT. It decided to suspend its research in Bandarban due to insistence by authorities that an official attend all meetings. The Commission was also subjected to harassment from unknown sources. This harassment included the erection of a large banner outside their hotel. The banner named three Bangladeshi women, all active with the Commission and warned readers to be aware of foreign influence. See Amnesty International interview with CHT Commission member Sara Hossain, Dhaka, March 2012. This banner was still erected outside the hotel, on one of the main streets in Bandarban, five months later when Amnesty International's delegation arrived. When Amnesty International asked Bandarban government officials about it, they said they were not aware of it and suggested that it had been put there just before the arrival of the Amnesty International delegation. In addition, Amnesty International received reports from human rights NGOs working on Pahari issues in the Hill Tracts about problems obtaining funding from government if their organization was perceived as being 'too biased' in its work towards Pahari. They informed us that the authorities were requiring them to have equal numbers of Bengali and Pahari beneficiaries in their programmes. Since the vast majority of their work is in the remotest areas which have predominantly Pahari populations, this amounts to the authorities demanding that they radically curtail their work. See for example Amnesty International interview with Taungya in Rangamati, March 2012.

¹⁶⁶ See also, Indigenous and Tribal Populations Convention, 1957 (No. 107), Article 13:

1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.

¹⁶⁷ The Land Commission Act 2001.

¹⁶⁸ The Land Commission Act 2001.

¹⁶⁹ Cambridge Dictionary online dictionary.

http://dictionary.cambridge.org/dictionary/british/custom_1

¹⁷⁰ Shapan Adnan and Ranajit Dastidar Alienation of the Lands of Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh Chittagong Hill Tracts Commission & IWGIA, 2011, p 65.

¹⁷¹ Amnesty International interview with women's human rights defenders focus group, March

2012.

¹⁷² Amnesty International interview with women's human rights defenders focus group, March 2012.

¹⁷³ Amnesty International interview with women's human rights defenders focus group, March 2012

¹⁷⁴ http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C107:
Indigenous and Tribal Populations Convention, 1957 (No. 107), Article 12:

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury.

¹⁷⁵ See UN Committee on the Elimination of Racial Discrimination, "General Recommendation 23: Indigenous Peoples" (18 August 1997) A/52/18, annex V.

¹⁷⁶ The UN Declaration on the Rights of Indigenous Peoples, Article 28.

¹⁷⁷ There is a provision in the Accord noting that landless Pahari will be provided with two acres of land, but there is no specification about when or how this would occur.

¹⁷⁸ See, Committee on Economic, Social and Cultural Rights, General Comment No. 7, Forced evictions, and the right to adequate housing (16th session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997) para 3. Safeguard measures that should be applied to all evictions have been clearly articulated by the UN Special Rapporteur on Adequate Housing in the Basic Principles and Guidelines on Development-based Evictions and Displacement (referred to as the Basic Principles), which reflect existing standards and jurisprudence on this issue. They include detailed guidance on steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law. The Basic Principles are an excellent guide for those drafting amendments to the Bill. The comments in this submission draw on these international standards, particularly the Basic Principles. See, Basic Principles and Guidelines on Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/4/18 of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, were considered by the Human Rights Council in 2007, available at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

¹⁷⁹ Committee on Economic, Social and Cultural Rights, General Comment 7, The Right to Adequate Housing: forced evictions, para 3.



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PUSHED TO THE EDGE

INDIGENOUS RIGHTS DENIED IN BANGLADESH'S CHITTAGONG HILL TRACTS

More than 15 years after an agreement guaranteeing the rights of Pahari-Indigenous peoples to their traditional lands in Bangladesh's Chittagong Hill Tracts, Pahari continue to be denied access to their land. Many are forced to eke out a living on state-owned "forest land" – land that was in fact once theirs.

The 1997 CHT-Accord promised to restore Pahari to their traditional lands, following their large-scale and repeated displacement during an armed conflict that saw tens of thousands of Bengali settlers occupying their land with the encouragement of the government.

Today, clashes between Bengali settlers and Pahari over land are commonplace and the Bangladeshi army maintains a heavy presence in the area.

The authorities' have remained ineffectual throughout, failing to protect the Pahari's right to security, their rights to traditional lands, and their livelihoods and way of life which are inextricably linked to those lands. This negatively affects all Pahari, particularly Pahari women.

Amnesty International calls on the government of Bangladesh to respect its obligations under international human rights law, including the UN Declaration on the Rights of Indigenous Peoples, and take concrete steps to return the Pahari's traditional lands to them, with the effective participation of Pahari women and men in the process.

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