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**Mandates of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur
on violence against women, its causes and consequences.**

REFERENCE: AL Indigenous (2001-8) G/SO 214 (89-15)
BGD 12/2013

31 October 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolution 24/9 and 23/25.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **allegations of violence and other human rights abuses against tribal/ indigenous peoples in the Chittagong Hill Tracts, Bangladesh.**

The allegations received indicate members of indigenous peoples of the Chittagong Hill Tracts have experienced murders, harassment, intimidation, religious persecution and in the case of indigenous women and children, sexual violence. According to the allegations, this violence is linked to land disputes that originate from Government policies that have promoted the migration of Bengali citizens to settle the Chittagong Hill Tracts over the course of several decades in order to alter the demographic composition of the region, a policy that has increased instances of land dispossession of the original inhabitants including the Bawm, Chak, Chakma, Marma and Tripura tribal peoples, also collectively referred to as Jumma peoples.

An issue underlying the allegations received is the reported lack of implementation of the Chittagong Hill Tracts Accord of 1997, which brought an end to an armed insurgency that arose in the 1970s. The accord provided for the recognition of the Chittagong Hills Tracts as a "tribal inhabited region", the promotion of indigenous cultures, customary laws and rights to customary lands and natural resources. It established a land commission to settle land disputes and provided the commission with "full power for cancellation of ownership of those lands and hills which have been so far illegally settled and occupied." Additionally, the accord provided for increased indigenous representation in local and regional governing councils, as well as for decreased military presence in the region. Other provisions of the accord included the

return and reintegration of refugees and internally displaced persons, and the granting of amnesty to indigenous persons and others involved in the armed conflict.

The information received indicates concerns over the Government's commitment to fully implement the Chittagong Hill Tracts Accord and resolve the underlying historical and social problems of the region that have led to the current situation of violence allegedly affecting the indigenous peoples of the region.

According to the information:

Unresolved land issues

Since the signing of the Chittagong Hill Tracts Accord, the region's indigenous peoples have continued to suffer land loss due to the granting of land titles to Bengali settlers by Government officials. It has been alleged that illegal land markets have proliferated in the region which have facilitated the establishment of Bengali settlements and commercial agricultural and other types of development projects promoted by private interests or by members of the military. Indigenous peoples have allegedly continued to see their lands encroached upon and be forcefully evicted from those lands, despite the signing of the Chittagong Hill Tracts Accord, which was intended in part to resolve land disputes that have negatively affected the indigenous peoples of the region.

According to the information, since the signing of the Accord there have been at least 14 major attacks on indigenous villages carried out by Bengali settlers in order to displace them from their traditional lands. It is alleged that approximately 22 percent of indigenous peoples in the Chittagong Hill Tracts were either evicted or driven from their homes between 1977 and 2007, and that as a result traditional ownership of land has decreased from 83 percent in 1978 to 41 percent in 2009.

The conflictive land situation is also aggravated by the unresolved situation of indigenous peoples who returned from exile in India and those who were internally displaced during the conflict period in the Chittagong Hill Tracts. According to the information received, approximately 65,000 indigenous persons comprising around 12,000 families fled to the Indian state of Tripura and some 100,000 families were internally displaced during the armed conflict. Although the international refugees have returned to Bangladesh, about 9,780 refugee families have not been able to go back to their homes because their lands have been occupied by Bengali settlers or the military. In the case of internally displaced persons, there has been little progress in their return to their homelands reportedly due to the ongoing conflicts with Bengali settlers over land issues. Consequently, around 90,200 indigenous families internally displaced during the armed conflict have not been able to return to their original lands in the Chittagong Hill Tracts.

It has been alleged that the land commission established by the Chittagong Hill Tracts Accord was inactive until 2009 and that since then it has not functioned efficiently. There has thus been no significant resolution of the problem of land dispossession and land conflicts faced by indigenous peoples in the Chittagong Hill Tracts.

In 2001, the Chittagong Hill Tracts Land Dispute Resolution Commission Act was passed which set out the process to be followed by the land commission. According to the information received, the 2001 act was adopted without input from local tribal regional council members who considered that the Act contained provisions that ran counter to the spirit of the Accord, as discussed further below. Subsequent efforts to amend this Act lead to the Chittagong Hill Tracts Land Dispute Resolution Commission (Amendment) Bill 2013, which was approved by the Cabinet Division of Bangladesh in June 2013 and is currently awaiting review by the Parliamentary Standing Committee on Ministry of Land.

However, it has been alleged that the 2013 bill, like the 2001 act, contains provisions that limit the jurisdiction of the land commission. It has been pointed out that while the 1997 accord provided that the land commission would settle land disputes in general terms, both the 2001 act and the 2013 bill allegedly preclude the settlement of disputes with respect to the traditional tribal lands occupied by Bengali settlers (which allegedly constitute 70 percent of land disputes in the Chittagong Hill Tracts) as well as with respect to those lands that have been used to establish State-owned forests, industries and development projects.

In addition, it has also been alleged that the 2013 bill will also preclude the use of tribal procedures of land dispute resolution. The 1997 accord provides that the land commission “shall settle disputes according to the existing rules, customs and practices of the Chittagong Hill Tracts” (section D(6)(b)). In this regard, concern has been expressed that section 6(1)(a) of the 2013 bill makes reference only to “existing laws and customs in the Chittagong Hill Tracts”. This provision would allegedly exclude local dispute resolution processes such as the participation of tribal village headmen in resolving land disputes and ensuring local land transfers or sales are free from disputes. Consequently, due to the factors stated above, it is alleged that the 2013 bill, if passed in its current version, will hinder the ability of the land commission to effectively resolve the full scope of land disputes that originate from the historical and contemporary dispossession of indigenous peoples’ lands in the Chittagong Hill Tracts.

Incidences of violence against indigenous peoples in the Chittagong Hill Tracts

According to the information received, the situation of land and social conflict in the Chittagong Hill Tracts has resulted in many alleged cases of violence including murders, destruction of indigenous homes and religious temples, forced land evictions and sexual violence against indigenous women and children. These

incidents have allegedly increased every year. According to the allegations, these incidents are mostly attributed to Bengali settlers, although it has also been alleged that military and police officers have been present at the scene or nearby during many violent incidents against indigenous peoples and have either not prevented them or themselves have assisted the settlers. In addition, it is alleged that perpetrators of these attacks have not been brought to justice.

It is alleged that in 2012 alone, six indigenous persons were killed and 117 indigenous persons were tortured or intimidated in the Chittagong Hill Tracts. Four attacks against indigenous communities in the Chittagong Hill Tracts were reported in 2012.

Recent alleged incidents of violence against indigenous peoples include:

- On 18 September 2011, a military commander in the area of Remacri union, Bandarban hill district, summoned a public meeting of 25 indigenous karbaries (village heads) from nearby villages. The commander accused the karbaries of not informing the military of the presence of members of the Arakan Liberation Party, an insurgent group from Myanmar, who have taken refuge in the Chittagong Hill Tracts. Two karbaries were allegedly beaten and tortured by the military officers, and other karbaries were subjected to harassment and intimidation during the meeting. They were subsequently forced to give their livestock to the military officers.
- On 14 December 2011, over 100 Bengali settlers attacked indigenous villagers at Kobakhali Bazaar in Khagrachari district in retaliation for the death of a Bengali settler. One indigenous woman was allegedly killed and 13 people were injured during the attack. It is alleged that several individuals were arrested but subsequently released on bail.
- On 7 April 2012, a 14 year old indigenous boy from the village of Aga Para in the Rangamati Hill District was killed by Forest Department guards at the Karnophuli forest, while he and two other adolescents were collecting firewood for domestic use. It has been alleged that Forest Department staff have been involved in the murder of several indigenous persons in the Chittagong Hill Tracts since at least 1999. It is alleged that the perpetrators of those crimes have never been brought to justice.
- In April 2013, 21 families of the indigenous Chak community of Chak Para of Aikkhying mouza under Baishari union of Naikhyongchari upazila in Bandarban district had to abandon their village due to alleged constant threats and harassments by Bengali settlers. It is alleged these settlers were hired by influential businessmen from rubber and other commercial companies as well as by fundamentalist militant groups who for five years have wanted to occupy Chak community lands for their commercial operations and homesteads. It is alleged that throughout this time the settlers continuously

beat indigenous Chak villagers and seized their valuables as they travelled to and from local markets, sexually harassed Chak women and girls, and destroyed their crops. Most of the families from this village are currently taking refuge in temporary shelters in the localities of Baishari Upar Chak Para and Baishari Headman Para in Baishari union, Bandarban district.

Violence against indigenous women and children

According to allegations received, violence against indigenous women and girls in the Chittagong Hill Tracts, including incidents of rape, attempted rape, abduction, assault and murder, has increased at an alarming rate in the last five years. In this regard, it has been informed that in 2007 and 2008 there were a total of 11 incidents of violence against indigenous women in the Chittagong Hill Tracts. This figure increased to 19 incidents in 2010, 26 incidents in 2011 and 55 incidents in 2012. Fourteen incidents of rape, three incidents of murder after rape and one murder of indigenous women were reported in the Chittagong Hill Tracts in 2012.

It is alleged that these incidences of violence are closely linked to the social conflicts and tension in the Chittagong Hill Tracts generated by the presence of Bengali settlers and their encroachment on indigenous lands. In that connection, it is reported that indigenous women and children are especially targeted for harassment and violence as a method to instill fear in the indigenous populations and thus facilitate the taking of indigenous lands.

Included among the specific alleged incidents of violence against indigenous women and children are:

- On 12 September 2011, a 3 year old indigenous girl in Thanchi upazila, Bandarban district was raped by a Bengali settler who worked as a labourer at a construction site near the victim's house. The perpetrator was reportedly caught by villagers in his home where he had taken the victim and was handed over to police authorities. Following protests by indigenous people, the chairman and police of Thanchi upazila (or sub-district) reportedly made a commitment to indigenous community representatives that legal action would be taken against the perpetrator.
- On 1 October 2011, a 32 year old indigenous Chakma woman from the Kamalchari union village in the Khagrachari hill district was raped and killed by a group of Bengali settlers, presumably from the area of Bhuo Chari. The victim was found at a narrow stream, with legs tied and a mutilated neck. Her gold jewelry was allegedly taken by the settlers. The victim's husband reportedly filed a complaint against an individual settler from the Bhuo Chari area.

- On 9 May 2012, an 11 year old indigenous Jumma girl was raped and killed by a Bengali settler in the Ultachari mouza area in Rangamati district. The victim was abducted by the perpetrator as she tended her family's cattle. Her body was found by the victim's grandfather and other villagers with deep cuts in her neck and deep cuts in her upper body. The perpetrator was arrested the next day. The perpetrator was allegedly a known sex offender who shortly before the incident was released on bail after being arrested for raping the 12 year old cousin of the victim the year before.
- On 7 July 2012, a 45 year old indigenous Jumma woman from the village of Bhushanchara in Rangamati district was allegedly raped and killed by Bengali settlers in the Uluchara area of Rangamati district. The victim's gold jewelry was allegedly looted by the perpetrators. One man was reportedly arrested, and relatives of the victim filed criminal complaints against three additional Bengali settlers presumed responsible for the crime.
- On 1 August 2012 an 11 year old indigenous Tripura girl was raped by a police officer in the Ataltila Noymile area of Merung union, Khagrachari district while she was grazing cattle near the Ataltila police camp. The victim's mother subsequently went to the Ataltila police camp to report the incidents, where the on-duty officer allegedly attempted to offer her Taka 1000 (US\$12) as a "compromise". The victim's mother refused and filed a criminal complaint. The mother and members of the victim's community have demanded the arrest of the policeman allegedly responsible for the rape.

Indigenous women in the Chittagong Hill Tracts allegedly lack an effective access to justice when reporting incidents of violence. With regards to the general situation of women in the region, it has been report that between 1 January 2010 and 31 December 2011, 56 cases related to violence against women were filed at the police stations in the three districts that comprise the Chittagong Hill Tracts region – Bandarban, Khagrachari and Rangamati. Of these, only 6 cases reportedly resulted in a court verdict and in none of the cases were the perpetrators punished for those crimes. With regards to violence against indigenous women in the Chittagong Hill Tracts, it has been alleged that in 2012, 32 cases of violence against indigenous women and children were filed before law enforcement authorities. In 17 of those cases the perpetrators were arrested by the police, but in none of those cases were they ultimately punished.

Police authorities allegedly refuse to investigate complaints regarding these incidents, or only superficially investigate them. In some cases, it is alleged that police authorities initiated investigations only when compelled to act following large-scale protests by indigenous peoples. Allegations have also been received of victims experiencing harassment from law enforcement officials, which further discourages the making of complaints. Victims or their families who report these crimes are also allegedly asked by police to produce witnesses of the crimes they reported.

According to allegations received, indigenous women and children frequently do not report these abuses committed against them due to fear of reprisals, intimidation or harassment by the perpetrators. A number of allegations refer to instances of “mediation” of these complaints, where perpetrators and their families seek to provide victims with compensation in order to dissuade them from complaining to the authorities. Indigenous women who have been raped have also allegedly experienced lack of medical attention from hospital personnel, which has caused the loss of necessary evidence to prove the commission of rape.

In February 2008, the High Court Division reportedly ordered the establishment of three courts in the Chittagong Hill Tracts to try cases of violence against women and children in accordance with the Prevention of Women and Children Repression Act. However, it has been alleged that these courts have not been effective due to the lack of financial ability of indigenous peoples to pursue cases before these courts, the lack of adequate legal assistance available to them and the prolonged nature of these judicial processes.

Religious persecution and intolerance

According to the information received, indigenous peoples in the Chittagong Hill Tracts have also faced destruction of religious temples, statues, and assault and harassment of indigenous Buddhist monks and other religious leaders. These incidences are reportedly prompted by intolerance of the religious beliefs of indigenous peoples, many who practice their traditional religions, Buddhism, Christianity and Hinduism, as well as by the land conflicts with Bengali settlers. It has been alleged that in 2012, two indigenous religious temples were burnt or destroyed, one of them in the Chittagong Hill Tracts. Among these cases is the following:

In this connection, it is alleged that on 28 January 2012, 20 to 30 Bengali settlers allegedly attacked the Buddhist meditation center of Kilachari Bidarshan Bhabana Prosikkon Kendra, in the village of Kilachari Para of No. 4 Kaptai Upazila of Rangamati Hill District, which was actively used by indigenous peoples from nearby villages. The attack was reportedly motivated by the previous killing of a Bengali settler by unidentified assailants. The Bengali settlers destroyed various parts of the temple, destroyed images of Buddha and looted valuables contained inside. The house of an indigenous person who lived near the temple was also broken into and looted during this attack. Indigenous families who lived nearby reportedly fled the area for over one month due to fear of the settlers. The attack allegedly caused serious disruption of the communal religious practices of local indigenous peoples.

While we do not wish to prejudge the accuracy of the above allegations, we would like to refer your Excellency’s Government to relevant international standards and previous communications by United Nations mechanisms relevant to the issues described

in this communication. While we are aware that Bangladesh abstained from voting on the United Nations Declaration on the Rights of Indigenous Peoples upon its adoption by the General Assembly, the Special Rapporteur on the rights of indigenous peoples would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples.

As the Special Rapporteur on the rights of indigenous peoples has previously stated, the “Declaration does not affirm or create special rights separate from the fundamental human rights that are deemed of universal application, but rather elaborates upon these fundamental rights in the specific cultural, historical, social and economic circumstances of indigenous peoples.”¹ These fundamental human rights include equality and non-discrimination, religious freedom, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Bangladesh. Those treaties include the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

Consistent with these human rights treaties, the Declaration on the Rights of Indigenous Peoples contains important provisions concerning the rights of indigenous peoples to life, security and physical integrity (art. 7); to have their cultures and identities protected (arts. 8, 9, 11); religious freedom (arts. 12 and 25); protection of indigenous women and children from violence and discrimination (art. 22); and property (arts. 10, 25, 26, 29). It also provides for right to redress for violations of their rights (arts. 27, 28, 29) and for respect and observance of treaties, agreements or other constructive agreements entered between States and indigenous peoples (art. 37).

The situation of indigenous peoples in the Chittagong Hill Tracts has been the subject of previous communications by the Special Rapporteur on the rights of indigenous peoples and his predecessor.² These communications concerned the allegations of ongoing illegal seizure of indigenous Jumma traditional lands in the Khagrachari Districts, and violent attacks on indigenous peoples in the Rangamati district.³ In this regard, the Special Rapporteur noted the need for Bangladesh to give heightened attention to the land situation of the Chittagong Hill Tracts, and particular attention be paid to article 26(1) of the Chittagong Hill Tracts Accord which states that no land within the Hill Districts shall be given in settlement, purchased, sold, transferred or leased without prior approval of the respective Hill District Council.⁴

Other United Nations mechanisms have also given attention to the situation of indigenous peoples in the Chittagong Hill Tracts. In 2001 the Committee on the Elimination of Racial Discrimination expressed concern about the slow implementation of the Chittagong Hill Tracts Accord and reports of human rights violations by security

¹ A/HRC/9/9, para. 40.

² See, A/HRC/15/37/Add. 1, paras/ 37-45.

³ Communications dated 3 April 2008 and 5 March 2010, respectively.

⁴ A/HRC/15/37/Add. 1, para. 44.

forces against indigenous peoples, including reports of arbitrary arrest, detentions and ill treatment.⁵ The Committee urged your Government to intensify its efforts towards implementation of the Accord.

As part of its 2009 Universal Periodic Review before the Human Rights Council, Bangladesh accepted recommendations to fully implement the Chittagong Hill Tracts Accord as a matter of priority and develop a time frame for its implementation.⁶ In its 2013 Universal Periodic Review, Bangladesh again supported recommendations to fully implement the Chittagong Hill Tracts Accord, and in addition expressed its support to recommendations for the prevention, investigation and penalization of violence against women and children, as well as for providing legal, medical, rehabilitation and counseling help to women who are victims of violence.⁷ I note that with regards to specific recommendations for measures to protect indigenous peoples and to protect indigenous women and children from violence and discrimination, Bangladesh stated that, while general social programmes have existed to protect these vulnerable groups, it nonetheless emphasized its position that no “indigenous minorities” or “group” exist in Bangladesh since all citizens of the country are indigenous to the land.⁸

The issue of violence against indigenous women was also raised by the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, following her recent May 2013 visit to Bangladesh. Special Rapporteur Manjoo referred to testimonies she heard during her visit regarding cases of violence or threats of violence against indigenous women as a means to pressure them to move from their traditional lands which consequently has led to their displacement and homelessness. In her press release issued after her visit, the Special Rapporteur encouraged the Government of Bangladesh to ensure effective implementation of the Chittagong Hill Tracts Accord and, relevant to the concerns of indigenous women, also pointed out the need for holistic solutions to address the multiple and intersecting inequalities and discrimination that women face.⁹

In this context, we would like to bring to Your Excellency’s attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the

⁵ CERD/C/304/Add.118, paras. 9, 10.

⁶ A/HRC/11/18/Add.1, p. 5.

⁷ A/HRC/24/12, paras. 129.8-129.11, 129.69-129.71, 129.87-129.89, and 129.92.

⁸ A/HRC/24/12/Add.1, p. 5.

⁹ OHCHR Press Release, *Special Rapporteur on Violence against women, its consequences finalises country mission to Bangladesh*, Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13374&LangID=E>

harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

We also wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women, whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

In light of the information and allegations contained in this communications, we would be interested in knowing your Excellency’s Government’s views on the accuracy of the information contained in this letter, and would be grateful to receive any additional information your Government may deem relevant. In particular, we would like to know further information about:

1) The measures taken to address the alleged situation of land dispossession and related social conflicts that indigenous peoples in the Chittagong Hill Tracts have faced, including the situation of indigenous peoples who were refugees or internally displaced during the armed conflict. In light of the recent adoption by the Cabinet Division of the Chittagong Hill Tracts Land Disputes Resolution Commission (Amendment) Bill 2013, what measures will be taken to address the concerns expressed by indigenous peoples in the Chittagong Hills Tracts over the ability of said land commission to effectively resolve land disputes in the region?

2) The measures taken to prevent, protect, investigate, sanction the cases of violence against indigenous peoples in the Chittagong Hill Tracts and provide effective remedies for the victims mentioned in this communication relating to the forcible eviction, assault, rape, torture, murder, destruction of property and destruction of indigenous religious temples and figures allegedly perpetrated by Bengali citizens and military and police officials.

3) Any specific measures taken to investigate and prosecute cases of violence against indigenous women and children in the Chittagong Hill Tracts, including those cases mentioned in this communication. In this connection, please describe measures to

facilitate indigenous women and children's access to justice in relation to human rights violations committed against them.

We would appreciate a response from your Excellency's Government within 60 days. We undertake to ensure that your Excellency's Government's response will be taken into account in my assessment of this situation and in developing any recommendations that we make for your Excellency's Government's consideration pursuant to the terms of my mandate.

Please accept, Excellency, the assurances of our highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences