

CHITTAGONG HILL TRACTS COMMISSION

REPORT OF THE CHITTAGONG HILL TRACTS COMMISSION'S MISSION IN BANGLADESH August 10-18, 2009

This report sets out the activities of the CHT Commission on its third mission to Bangladesh on August 10-18, 2009, following steps taken by the Awami League-led Government to implement provisions of the CHT Accord of 1997. The report also follows up on the issues and recommendations raised in the report of the CHT Commission's second mission in Bangladesh in February 2009.

The third mission aimed at assessing the situation in the CHT with regard to ongoing reports of human rights violations and monitoring the implementation of the different provisions of the CHT Accord. It also aimed at following up on recommendations made during the previous missions and engaging in dialogue with concerned parties.

Accordingly the mission held high-level meetings with the Prime Minister and concerned Ministers, the CHT Land Commission and the Law Commission. It also met brigade commanders, senior police officers, political party and civil society representatives and interviewed victims of human rights violations among the indigenous peoples in the CHT. The delegation also conducted field visits to Bandarban, Rangamati and Khagrachori districts, interviewing and holding discussions with both indigenous peoples and Bengalis, including victims of human rights violations and forcible land grabbing. For the full list of meetings held, see [Annex 1](#).

The following is a brief account of the issues discussed with the various concerned parties during the third mission and the recommendations put forward by the CHT Commission. These recommendations to the Government are intended for its immediate consideration, and focus upon solving the land disputes in the CHT, enhancing the powers of the civil administration in the CHT and protecting human rights and ensuring access to justice in the CHT.

1. The full implementation of the CHT Accord 1997

In 1997, the Government of Bangladesh and Parbatya Chattagram Jana Samhati Samiti (PCJSS) signed the CHT Accord, which ended an almost two-decade long armed struggle for autonomy for the region. The Accord promised

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- (i) land rights to the indigenous people;
- (ii) revival of their cultural identities;
- (iii) rehabilitation of internally displaced people and repatriated refugees;
- (iv) withdrawal of military from the CHT, with the exception of permanent military establishments; and
- (v) self-government through regional and district councils.

Most of the provisions, however, remained either unimplemented or only partially implemented, thereby maintaining the CHT as an area characterized by severe human rights violations and militarization.

With the Awami League-led Government's pledges in connection with the December 2008 election to fully implement the CHT Accord and to secure their rights and to undertake special programmes to preserve the language, literature, culture, and unique lifestyles of the indigenous communities, hopes were raised that all the provisions of the CHT Accord would finally be implemented without further delay.

True to its election manifesto, the Government has taken important measures to implement the CHT Accord. These include specifically the setting up of the National Committee for Implementation of the CHT Accord, re-establishment of the Land Commission and the Task Force on Rehabilitation of Returnee Jumma Refugees and Internally Displaced Persons, the cancellation of plantation leases that have not been properly developed, and the withdrawal of temporary military camps. This has generated a sense of momentum, which the CHT Commission appreciates and encourages.

Unfortunately, it remains unclear how and when the various provisions will be implemented. No steps have been taken to develop a time-bound action plan in consultation with indigenous peoples in the CHT to ensure that all the provisions in the Peace Accord are implemented and in an appropriate sequence. The development of a time-bound action plan has been strongly recommended by several concerned parties, including the Human Rights Council in its Universal Periodic Review of Bangladesh, the CHT Commission and indigenous peoples in Bangladesh.

The CHT Commission is concerned about the reports of renewal of hostilities between the different internal groupings in the CHT. With the Government's initiatives to implement the remaining provisions of the CHT Accord it is as imperative as ever that the indigenous peoples in the region act in unity.

Recommendations:

- The Government should take immediate steps to develop a time-bound action plan for the implementation of all provisions of the CHT Peace Accord in consultation with indigenous peoples in the CHT.
- The CHT Commission further recommends that the financial costs for implementing the CHT Accord and making its implementing bodies fully functional be worked out and included in the budget of the Ministry of Chittagong Hill Tracts Affairs to be handed to the Ministry of Finance before the next budgetary review in December 2009.

II. Land disputes

As noted by the CHT Commission in its report from the second mission to Bangladesh and as evidenced from the discussions held with civil society in the CHT, one of the main problems in the area is the indigenous peoples' loss of land due to evictions, government settlement programmes of Bengalis from the plains between 1979 and 1986, land grabbing and so-called development projects. There is a backlog of land related problems in the CHT, such as the failure to record titles to land allotted to or under customary use by indigenous peoples, to implement the provisions for resettlement and rehabilitation of repatriated indigenous refugees and to cancel illegally occupied lands and unnecessary land acquisitions involving forcible eviction of the indigenous peoples. Expansion of settlement of Bengali settlers, forcible land grabbing and communal clashes related to land conflicts continue to be reported in all three districts.

The CHT Commission finds it encouraging that the Government on July 19, 2009 has appointed the Chairman of the CHT Land Commission and that the Land Commission Chairman has reassured that land held under customary law will be considered when determining land disputes as it is stipulated in the CHT Accord that "The (Land) Commission will resolve disputes on the basis of existing laws, customs and systems of the Chittagong Hill Tracts". The CHT Commission, however, is concerned about the rate of progress towards activation of the Land Commission; the lack of allocation of staff and office facilities; the Land Commission's lack of progress on the determination of disputed land claims; and its apparent decision to hold the cadastral survey before the settlement of land disputes. Furthermore, there seems to be uncertainty in terms of how the Land Commission would deal with cases involving customary title/use vis-à-vis certificates issued by the Deputy Commissioner to Bengali settlers from the plains in the late 1970s or early 1980s.

It is also of concern to the CHT Commission that the proposed amendments to the CHT Land Dispute Resolution Commission Act by the CHT Regional Council have apparently not been considered by the relevant Ministries. The recommendations include provisions (i) to remove the virtual veto powers of the Chairperson and (ii) to delegate powers of the Land Commission to any member or official to conduct preliminary enquiries and hearings.

Another key actor in addressing the land conflicts in the CHT is the Task Force on Rehabilitation of Returnee Jumma Refugees and Internally Displaced Persons. However, as is the case with the CHT Land Commission, the Task Force lacks the necessary resources, including staff, to perform its duties. The need of the Government to assess the resources needed for the Task Force and the Land Commission to ensure full settlement of all the land disputes brought to the attention of the Land Commission was discussed with both Ministers and the donor community.

The CHT Commission would like to highlight the recommendation of the Parliamentary Standing Committee on CHT Affairs on August 18, 2009, to cancel 260 plots of land leased out for rubber cultivation for violating the terms and conditions of the allotment. Concerns were however raised about the arbitrary way the field investigation is being done, the possible lack of neutrality of those in charge of providing the information about fulfillment of the terms and conditions of the allotments as well as how and to whom the cancelled plots would be allocated.

Recommendations:

- The Land Commission should establish a database of all disputed land claims, providing the claimants with forms on which they can supply the information required for this purpose. This might be the subject of an approach to international agencies such as UNDP for financial and technical assistance.
- Because of the complexity of overlapping titles on the same land plots granted in different circumstances, the land disputes should be settled before the cadastral survey is carried out and a definitive set of rules should be developed by the Land Commission to rank the relative priority of different kinds of land titles. For those whose claims to land are disallowed, the government should draft rehabilitation measures for discussion with community leaders.
- The Government should immediately adopt needed amendments of the CHT Land Dispute Resolution Commission Act 2001 and provide the CHT Land Commission as well as the Task Force for CHT Refugee Rehabilitation Affairs with the necessary means to resolve land disputes with effectiveness and justice, as stipulated in the CHT Accord.
- Moreover, there is a need for a speedy development of government guidelines for the interaction and division of labour between the Task Force and the Land Commission.
- The CHT Commission recommends that the plots of land leased out for plantations which violate the terms and conditions of the allotment are restored to the indigenous people, who traditionally used these plots under customary law.

III. Enhancing powers of the civil administration

Since the previous mission of the CHT Commission in February 2009 no progress has been seen in the transferal of subjects and functions to the three Hill District Councils as well as the enactment of Rules of Business for the CHT Regional Council, which are provided for in the CHT Accord in order to strengthen local governance and ensure regional autonomy in the CHT.

The CHT Commission finds the newly passed Upazila Parishad (Repealed Act Re-Introduction and Amendment) Bill a cause for concern. With the Bill, the upazila parishads have to accept the advisory role of Members of Parliament when making plans for development in their respective electoral constituencies. In the CHT, this is one of the functions of the CHT Regional Council and the Bill therefore potentially weakens the powers of the local administration in the CHT.

Another important aspect of strengthening the civil administration in the CHT is the holding of elections for the Hill District Councils and the CHT Regional Council. With the dramatic demographic change in the CHT since the late 1970's there is a need for an electoral system, which ensures fair representation of all ethnic communities and women. This will require an amendment to the Hill District Council Acts. The CHT

Commission is therefore disappointed at the absence of proposals for electing the Hill District Councils.

The civil administration in the CHT is also hobbled by the continuing heavy military presence in the region. The CHT Commission therefore welcomes the announcement on July 29 2009 that an army brigade consisting of three battalions and 35 security camps would be withdrawn from the CHT by September 2009. At the time of the CHT Commission's mission, the withdrawal of army camps had begun. While welcomed, albeit guardedly, by the indigenous peoples and some Bengali settlers, others claimed that their safety would be jeopardized.

During meetings with the brigade commanders and their staff the CHT Commission members were informed that they saw no security risks with compliance to the government policy on the withdrawal of the camps. This view was confirmed by the police and local authorities. It should also be noted that the withdrawal of army camps from the hill districts are merely redeployment of troops to battalion headquarters and according to various sources, more than 300 camps will remain in the CHT.

While the withdrawal of military camps is a positive indication of the Government's determination to implement the CHT Accord, the CHT Commission continues to receive many reports of continued military influence on the civil administration of the CHT as well as reports of the army officers instigating Bengalis to provoke communal riots and to protest against the withdrawal of army camps. The CHT Commission is concerned that the scope and ambit of Operation Uttoron (Operation Upliftment), currently ongoing in the CHT, is not in the public domain. The executive order authorizing this Operation reportedly confers on the military rights to intervene in civil matters beyond their proper jurisdiction.

Recommendations:

- All the agreed subjects and functions as specified in the Accord should be handed over to the Hill District Councils with immediate effect, and all the necessary steps should be taken to ensure the full functioning of the CHT Regional Council.
- It is imperative that elections are held for the Hill District Councils and the CHT Commission recommends that alternative electoral methods are explored promptly. In the meanwhile, the representative character of the Hill District Councils could be improved by co-opting members of the smaller ethnic minorities in the area.
- Functions normally performed by civilian agencies but now undertaken by the military, such as development projects and any other activities not requiring specific military skills, should be transferred to the civil administration and to institutions set up by the CHT Accord.
- The order authorizing Operation Uttoron should be published for public scrutiny and reviewed judiciously in the public interest.

IV. Human rights and access to justice

During the mission, the CHT Commission delegation met a broad section of indigenous peoples' representatives and civil society and interviewed victims of human rights violations. It is the assessment of the CHT Commission that the overall human rights and justice situation in the CHT continues to be a cause for great concern.

Indigenous peoples in the CHT continue to face human rights violations including extrajudicial killings, arbitrary arrests, unlawful detentions, torture, rape, attacks, harassment, religious persecution, political harassment, and lack of access to socio-economic rights or to freedom of expression including with respect to cultural activities. A vast majority of cases remain without proper investigation, prosecution and punishment. This culture of absence of justice and impunity of the offenders pervade the issue of justice in the CHT.

Access to redress for victims and their families are few and often difficult in practical terms. Particular problems relate to discriminatory legislation, lack of access to courts in terms of physical access as well as lack of funds and legal aid, and the failure to activate the legal aid programme of the government in the CHT to date. Lack of information is another factor as is the lack of available lawyers to assist. Poverty and the length of the process of getting to court are other factors preventing indigenous peoples from pursuing the cases they file all the way through the legal system.

In light of the serious human rights situation in the CHT, the CHT Commission was encouraged by the Prime Minister's statement on the occasion of the the International Day of the World's Indigenous People in support of the UN Declaration on the Rights of Indigenous Peoples. This statement encourages not only the indigenous peoples in Bangladesh, but also all over the world, and it indicates that the Government of Bangladesh recognises the particular rights of its indigenous communities. There does, however, seem to be confusion about the term 'indigenous peoples' both within the Government and civil society, which needs to be clarified.

Recommendations:

- The CHT Commission urges continuing measures to enhance access to justice within the CHT, including the activation of legal aid committees.
- The Government should invite the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to assess the situation in the CHT and clarify the concept of indigenous peoples.
- The CHT Commission notes the Government's call to end impunity and assert due process and reiterate its recommendation that in the same spirit the issue of impunity for human rights violations in the CHT should be addressed by holding independent and impartial investigations into such reports, and where sufficient evidence exists, bringing those responsible to trial, and providing reparations to victims.
- Considering the prevalence of reports of violence against women in the CHT, as in the rest of the country, the Commission recommends that priority be

given to activating the Nari o Shishu Nirjaton Domon (Suppression of Violence against Women and Children) Tribunals in every district of the CHT and that appropriate training be provided to concerned law enforcement and judicial officers responsible for investigation, prosecution and adjudication of such cases, and to extend legal aid to victims.

- The CHT Commission urges that the review of vexatious cases announced by the Government be conducted by an impartial and accountable body, and further that effective redress and reparations are made available to the affected persons.
- The Government should allow human rights and other NGOs (whether local, national or international) free access to travel within the CHT and monitor human rights violations. The CHT Commission reiterates its recommendation that open invitations are extended to the UN Special Procedures¹ as mentioned by the Government under the Universal Periodic Review in February 2009.
- Government legal services in the region should be activated, and an effective public information and education program should be developed, so that victims and witnesses of human rights and crimes, in particular violence against women, are able to access legal remedies, as previously recommended by the CHT Commission.
- The Government of Bangladesh is urged once again to withdraw its reservations to internationally agreed treaties on human rights, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and All Other Forms of Cruel, Degrading and Inhuman Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).
- The Government of Bangladesh is urged to ratify ILO Convention No. 169 as well as the Refugee Convention, as recommended by the UN Human Rights Council and as agreed by Bangladesh with the international community in the Poverty Reduction Strategy Paper.

¹ The Special Procedures include the Special Rapporteurs and the Working Groups of the UN Human Rights Council.

Annex 1: List of meetings

- Sheikh Hasina Wazed, Prime Minister
- Dr. Dipu Moni, Minister, Ministry of Foreign Affairs
- Mr. Abul Mal Abdul Muhith, Minister, Ministry of Finance
- Mr. Dipankar Talukder, State Minister, Ministry of Chittagong Hill Tracts Affairs
- Mr. Promod Mankin, Minister, Ministry of Cultural Affairs and Chairman, Parliamentary Standing Committee on CHT Affairs
- Justice Mohammad Abdur Rashid, Chairman, Law Commission
- Justice Khademul Islam Chowdhury, Chairman, CHT Land Commission
- Mr. Jyotindra Lal Tripura, Chairman, Task Force on Rehabilitation of Returnee Jumma Refugees and IDPs
- Local administration
 - Mr. Jyotirindra Bodhipriya Larma (Shantu Larma), Chairman, CHT Regional Council
 - Mr. Mizanur Rahman, Deputy Commissioner, Bandarban
 - Mr. Shourendronath Chakrabarty, Deputy Commissioner, Rangamati
 - Mr. Kyaw Shwe Hla, Chairman, Bandarban Hill District Council
 - Mr. Nikhil Kumar, Chairman, Rangamati Hill District Council
- Brigade Commanders
 - Brigadier General Shah Atiqur Rahman, Brigade Commander, Bandarban
 - Brigadier General AKM Abdullah Hil Baki, Brigade Commander, Rangamati
 - Brigadier General Mohammad Emadul Haque, Brigade Commander, Khagrachori
- Political parties
 - Parbatya Chattagram Jana Samhati Samiti (PCJSS)
 - United Peoples' Democratic Front (UPDF)
 - Jamaat-e-Islami
- Civil Society (CHT Forest and Land Committee, Tribal Muslim Welfare Association, Jummo Refugee Welfare Association, Indigenous and Bengali representatives in Bandarban, Rangamati and Khagrachori)
- Media
- Diplomatic missions and donor agencies

Annex 2: Background to the CHT Commission

On 31 May and 1 June, 2008, at a meeting of experts in Copenhagen, Denmark, it was decided to re-establish the Chittagong Hill Tracts Commission in view of the situation in the CHT with the following mandate:

"To promote respect for human rights, democracy and restoration of civil and judicial rights in the CHT in Bangladesh, including examination of the implementation of the CHT Accord of 1997. The CHT Commission will build on the work by the first CHT Commission (1990-2001)."

The Commission was re-constituted with eleven members from Bangladesh and abroad: Ms. Sultana Kamal (Bangladesh, co-chair), Lord Eric Awebury (United Kingdom, co-chair), Dr. Ida Nicolaisen (Denmark, co-chair), Dr. Shapan Adnan (Bangladesh), Ms. Victoria Tauli-Corpuz (Philippines), Mr. Robert Evans (United Kingdom), Dr. Muhammed Zafar Iqbal (Bangladesh), Ms. Sara Hossain (Bangladesh), Dr. Hideaki Uemura (Japan), Mr. Lee Swepston (USA) and Mr. Lars-Anders Baer (Sweden).

The CHT Commission held its first visit to Bangladesh August 6–14, 2008, with the aim of becoming familiar with the situation in the CHT, holding initial meetings with concerned parties and seeking their input into possible actions to be taken and recommendations to be made by the CHT Commission. It also directly received complaints on land and human rights violations in the CHT.

The CHT Commission carried out its second mission to Bangladesh February 16-22, 2009 with the aim of informing the newly elected government about the CHT Commission's concerns and urge it to take concrete and time-bound measures for the full implementation of the Peace Accord, and to address ongoing human rights violations in the CHT on an urgent basis. The delegation met with a broad range of concerned parties and raised issues of concern and recommendations in its mission report.