

# Chittagong Hill Tracts Commission

**Co-Chairpersons:**  
Sultana Kamal,  
Lord Eric Avebury,  
Elsa Stamatopoulou

12 July, 2011

To  
The Honourable Prime Minister, Sheikh Hasina  
Government of the People's Republic of Bangladesh  
Prime Minister's Office  
Tejgaon, Dhaka

**Subject: Concern regarding the 15<sup>th</sup> amendment of the constitution**

Honourable Prime Minister,

Greetings from the Chittagong Hill Tracts Commission.

The Chittagong Hill Tracts Commission (CHTC) expresses its serious concern about the contents of the 15<sup>th</sup> amendment to the National Constitution of Bangladesh, which was passed by the Parliament on 30<sup>th</sup> June 2011. The CHT Commission had been hopeful that the four founding values (democracy, socialism, nationalism and secularism) upon which the original 1972 Constitution was founded would be upheld in full. We are instead disturbed to note that many of the provisions now inserted in the Constitution are antithetical to principles of equality, marginalize minorities, have negative implications for the development of the country and will have consequences for democracy, stability, growth and progress of the entire country.

We set out below a summary of the key changes which concern us and the background to these:

- The insertion of the phrase "Bismillah-ar-Rahman-ar-Rahim" before the preamble to the constitution was added in the fifth amendment to the Constitution in 1979 by military ruler, General Ziaur Rahman along with the phrase inserting 'trust and faith in almighty Allah' in place of 'secularism' (Art. 8). This has now been reinserted by the 15<sup>th</sup> Amendment.
- The eighth amendment to the Constitution, adopted under the military ruler, General Hossain Mohammad Ershad, in 1988, purported to make Islam as the state religion (Article 2A). This has been retained by the 15<sup>th</sup> Amendment, although a constitutional challenge to this provision is pending in the Supreme Court.
- Both these provisions resulted in the Constitution moving away from one of its founding pillars of 'secularism' and becoming manifestly more discriminatory and communal in nature. It is a direct rejection of the full citizenship rights of the hundreds of thousands of people from diverse religions and beliefs who are Bangladeshis.

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- Article 6(2) of the Constitution now says: “The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis”.
- Article '23A' now says: “The culture of tribes, small ethnic groups, ethnic sects and communities- The state shall take steps to protect and develop the unique local culture and tradition of the tribes [upajati], minor races [khudro jatishaotta], ethnic sects and communities [nrigoshthi o shomprodai]”. These provisions have been inserted by the 15<sup>th</sup> Amendment despite sustained criticisms by thousands of citizens.
- We strongly believe that the estimated 50-60 indigenous peoples living in the Chittagong Hill Tracts and in the plain lands all over the country should be rightfully recognized as ‘indigenous peoples’ in line with the United Nation’s modern understanding of the term based on self-identification, historical continuity with pre-colonial and/or pre-settler societies, strong link to territories and surrounding natural resources, distinct social, economic or political systems, distinct language, culture and beliefs, and their non-dominance in society.

We have learned that several Members of Parliament were opposed to some or all the above-mentioned amendments to the constitution, but were unable to express their dissent on account of pressure. Many members of the civil society and the media also opposed these amendments and the process through which these amendments took place. The CHT Commission believes that a national consensus is needed before bringing any major amendment to the Constitution. This consensus had been missing from the very beginning of the amendment process.

The CHT Commission also noted that there had been heightened activity from the intelligence agencies prior to the constitutional amendment process and right after the tenth session of the United Nations Permanent Forum on Indigenous Issues. For example, at the Forum Mr. Iqbal Ahmed, the First Secretary of the Bangladesh mission to the UN commented that “Bangladesh does not have any ‘indigenous’ population”, and that the CHT Accord “has nothing to do with ‘indigenous issues’”, that the Study on the status of the implementation of the CHT Accord presented by Mr. Lars Anders Baer was “a ‘lopsided’ opinion on a ‘non-indigenous’ issue”, and that presenting the report by Mr. Baer is “politically concocted by some enthusiastic quarters with questionable motives”. These comments have been received with deep disappointment by the CHT Commission.

The intelligence and security agencies recently misrepresented the conventions of the UN and the objective of the United Nations and its various instruments to the representatives of the Government, including Ministers and policy makers and the people of Bangladesh as reported by the media. In response to these misconceptions and misrepresentations, we urge you to go through the enclosed document, Annex.

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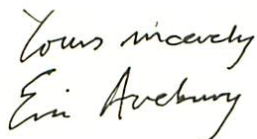
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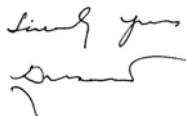
In view of the above discussions, the CHT Commission makes the following recommendations:

- The Government should take immediate steps to respond to citizens' concerns and to repeal the 15<sup>th</sup> amendment to the Constitution.
- The Constitution of Bangladesh should not include any religion as a state religion.
- The Constitution should not have 'Bangalee nationalism' as its foundation. There is documentary evidence of the contributions by many non-Bangalees towards the War of Liberation.
- The estimated 50-60 indigenous peoples all over Bangladesh should be recognized as 'indigenous' (adibashi) by the Bangladesh Constitution, in line with the recognition given by the United Nations and acknowledged by the Honourable Prime Minister and others.

On behalf of the CHT Commission,



Eric Avebury  
Co-chair of the  
CHT Commission



Sultana Kamal  
Co-chair of the  
CHT Commission



Elsa Stamatopoulou  
Co-chair of the  
CHT Commission

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## ANNEX

A report in the Daily Independent, 'Tribal leaders divided over indigenous issue' (30 May 2011), claimed that the indigenous peoples of the CHT are 'divided' over their identity as 'indigenous peoples'. The report, written by Deepak Acharjee, a special correspondent of the Independent, wrongfully pointed out that the different indigenous peoples are divided over using the term 'indigenous' to be recognized in the Bangladesh Constitution. On 29 April a demonstration was held in Dhaka with participation from indigenous peoples from all over the country, including the plains where indigenous peoples unanimously demanded that they be recognized in the constitution in a respectful manner and that no unacceptable identity be imposed upon them. The demand has persistently been made by indigenous peoples from all communities and recently the UN Permanent Forum including its member countries have shown full solidarity to this demand. The Law Minister, Barrister Shafique Ahmed later made a similar claim, which was later disproved by indigenous peoples leaders led by Barrister Raja Devasish Roy at a meeting with him.

Another report in The Daily Jugantor, "The Country's sovereignty will be at stake if *upajatis* are given recognition as indigenous," by B M Jahangir (7 June, 2011) stated that a leading state intelligence agency requested senior ministers and other policy-makers to refrain from recognizing the tribal ("upajati") groups of the Chittagong Hill Tracts (CHT) as *adibashi* (the Bengali equivalent of indigenous) under any conditions. The agency stated that otherwise the sovereignty of the country would be at stake and the Government would lose all control over the area in implementing the provisions of the relevant UN instruments. The agency referred to a letter each of the Ministry of Foreign Affairs and the Ministry of Chittagong Hill Tracts (CHT) Affairs on the issue. It also stated that some donors, and international and national NGOs are engaged in a "deep conspiracy" and that they are conducting their activities in secret with long-term and "oshoth" (dishonest) intentions. It was alleged that these groups are seeking to legitimize the use of the term *adibashi* by inviting ministers as chief guests to seminars and meetings on the implementation of the CHT Accord. Members of the cabinet were requested by the agencies to be vigilant in this regard.

One of the comments made by intelligence group representative and made earlier by Government representatives is that the CHT ethnic groups are not 'primitive' ("aadim") and hence they are not 'indigenous' (*adibashi*). The comment shows the discriminatory attitude and lack of understanding of the comment-maker, who is obviously equating indigenusness with people "from a pre-historic age". 'Primitiveness' has nothing to do with 'indigenusness'.

The intelligence agency reports comment that India, Pakistan and other South Asian countries do not acknowledge their tribal people as indigenous. This is not substantially correct having regard to the following:

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- Nepal’s interim constitution uses the terms “Adibashi/Adivasi” and “Janajati” and has extensive provisions on representation, safeguards on affirmative action and so forth.
- Nepal has ratified the ILO Convention on Indigenous & Tribal Peoples of 1989 (Convention No. 169).
- India’s constitution has extensive provisions on its “scheduled tribes” and “scheduled castes”, including bars against the Government of India on legislating on “social and religious customs” of Nagas and Mizos and on “land ownership” in the states of Nagaland and Mizoram, without the consent of the Legislative Assemblies of the concerned states.
- The Inner Line Regulation, 1873, which applies in Mizoram, Nagaland and Arunachal Pradesh states of Northeast India (and once used to apply to the CHT) prohibits non-natives from entering the concerned areas, on sanction of imprisonment.
- India has ratified the ILO Convention on Indigenous & Tribal Populations of 1957 (Convention No. 107).
- Pakistan’s constitutional provisions on “Tribal Areas” may not be removed without ascertainment by the President of the views of the people of the area concerned, including the tribal jirga.
- Pakistan has ratified the ILO Convention on Indigenous & Tribal Populations of 1957 (Convention No. 107).

Another argument made by the intelligence and also said by Government representatives in public statements is that the CHT groups migrated from Tripura and Arakan (Rakhaing/Rakhaine) and hence they cannot be indigenous to the CHT. This is also not correct.

- Even if the CHT groups migrated from a place outside Bangladesh, according to ILO Convention 107 (ratified by Bangladesh in 1972), they are still to be regarded as indigenous if they are: “members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institution of the nation to which they belong” (Article 1b).
- At the time of colonization by the British (1760-1860), the CHT indigenous peoples were already living in the Chittagong-CHT region.
- Several of the CHT peoples have lived in the CHT and in the plains Chittagong district (not to be confused with the CHT) for centuries and perhaps beyond a millennia.

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The report states that the CHT ethnic groups have been termed as ‘upajati’ and they have not protested against that term. This is incorrect.

- There are numerous demands for recognition as indigenous (including from the five current members in Parliament: Dipankar Talukder, Bir Bahadur and Jatindra Lal Tripura, Advocate Promode Mankin, Prof. Athin Raghaine, and at least one of the previous CHT MPs from the BNP: Mani Swapan Dewan).
- Representatives of CHT peoples have protested against the ‘upajati’ epithet on numerous occasions, in writing and verbally at several gatherings, including leaders of the regional political parties, citizen’s groups (such as the Bangladesh Adivasi Forum, CHT Citizens Committee, Movement for the Protection of Forest and Land Rights in the CHT, among others).

The report informs that the Ministry of Chittagong Hill Tracts Affairs has informed all concerned that the CHT ethnic groups are to be regarded as upajati.

- This is not in conformity with several laws, policy documents and statements of the Government of Bangladesh.
- Several heads of the Government of Bangladesh, including Prime Minister Sheikh Hasina, former Prime Minister Khaleda Zia and former Chief Adviser Fakhruddin Ahmed have addressed the indigenous peoples as ‘adibashi’ in their (separate) goodwill messages on International Indigenous Peoples Day celebrations in Dhaka on different dates.
- The term ‘upajati’ is used in a number of laws, including the Hill District Council laws of 1989 and 1998 and the CHT Regional Council Act of 1998.
- However, the term ‘adibashi’ is used in the Small Ethnic Groups Cultural Institutes Act of 2010 (along with “small ethnic groups”), and replaces the earlier term ‘upajati’
- The term ‘adibashi’ occurs in PRSP, 2005.
- The term ‘aboriginal’ is used in the East Bengal State Acquisition and Tenancy Act, 1950, which is among the laws protected in a schedule of the Constitution of Bangladesh.
- The term ‘indigenous’ is used in the CHT Regulation of 1900, the Finance Acts of 1995 and 2010, PRSP (2008 and 2010), Five Year Plan (2010) and sectoral policies of the Government, among others.

The report also states that the intelligence argues that the USA and Australia, despite having genuine indigenous groups, did not support the “UN Declaration on the Rights of Indigenous Peoples (ILO Convention No. 169)”. This is incorrect

- Australia, along with the USA, despite having voted against the adoption of the UN Declaration on the Rights of Indigenous Peoples in the UN General Assembly, have subsequently changed their position and expressed their support for the aforesaid UN Declaration.



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### CC to: (Not in order of precedence)

1. Syeda Sajeda Chowdhury, MP, Honorable Deputy Leader of the House & Chairperson, National Committee for Implementation of the Chittagong Hill Tracts Accord.
2. Dr. Dipu Moni, MP, Honourable Minister, Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh, Dhaka.
3. Barrister Shafique Ahmed, Honourable Minister, Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh, Dhaka.
4. Mr. Syed Ashraful Islam, MP, Honourable Minister, Ministry of Local Government, Rural Development and Cooperatives, Government of the People's Republic of Bangladesh, Dhaka.
5. Mr. Rezaul Karim Hira, MP, Honourable Minister, Ministry of Land, Government of the People's Republic of Bangladesh, Dhaka.
6. Mr. Jyotirindra Bodhipriya Larma, Honourable Chairman, CHT Regional Council, Rangamati.
7. Mr. Dipankar Talukdar MP, Honourable State Minister, Ministry of CHT Affairs, Government of the People's Republic of Bangladesh, Dhaka.
8. Dr. Hasan Mahmud, Honourable State Minister, Ministry of Environment & Forests, Government of the People's Republic of Bangladesh, Dhaka.
9. Mr. Promod Mankin, MP, Honourable State Minister, Ministry of Cultural, Government of the People's Republic of Bangladesh, Dhaka.
10. Mohammad Shah Alam, MP and Chairman, Parliamentary Standing Committee, Ministry of CHT Affairs, Government of the People's Republic of Bangladesh, Dhaka.
11. Mr. Jatindra Lal Tripura, MP and Chairman, CHT Task Force on Returnee Refugees and Internally Displaced People, Government of the People's Republic of Bangladesh, Khagrachari.
12. Mr. Bir Bahadur, MP and Chairman, CHT Development Board, Government of the People's Republic of Bangladesh, Rangamati.
13. Justice Khademul Islam Chowdhury, Chairperson, CHT Land Commission.
14. Mizanur Rahman, Chairman of National Human Rights Commission (NHRC).