

**10th Session of the United Nations Permanent Forum on Indigenous Issues
May 16-27, 2011
New York**

**Agenda Item 8:
Future Work of the Permanent Forum:
Report on the Implementation Status of the Chittagong Hill Tracts Accord of 1997
25 May, 2011**

**Intervention by:
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Madame Chairperson, Indigenous, state & non-governmental delegations, ladies & gentlemen

CONGRATULATIONS TO RAPPORTEUR

I offer my congratulations to Mr. Lars Anders Baer for his report on *the Implementation Status of the Chittagong Hill Tracts Accord of 1997* (E/C.19/2011/6). It is well-researched and factual, and contains reasonable and implementable recommendations. I also commend the observer governments for participating in the discussion today. This is what the Forum is all about: to have dialogues between indigenous peoples, governments and others. I wish more of this were to happen, here in the plenary of this Forum, in side events parallel to the sessions and in informal discussions over meals or at the governmental missions in New York.

PERSONAL INVOLVEMENT IN ACCORD NEGOTIATIONS

Before I enter into the substantive discussion, let me share with you some personal experiences in relation to the Accord. Immediately before the signing of the agreement on 2 December 1997, at the invitation of the Government of Bangladesh and that of the JSS - the CHT indigenous peoples' political party under whose leadership the Accord was signed - I helped facilitate the final negotiations on the contents of the Accord. I therefore share in the joys and sorrows surrounding the Accord in a personal manner.

DIALOGUE WITH PRIME MINISTER OF BANGLADESH

I believe in dialogue and discussion as an important way to resolve differences and close gaps and therefore seize every opportunity for dialogues. I am grateful to the Prime Minister of Bangladesh, Hon'ble Sheikh Hasina, for having given me an opportunity to discuss matters of the Chittagong Hill Tracts at a one-to-one meeting recently. We have agreed over several matters on the issue of implementation of the Accord and on constitutional reform. In some areas we do have differences, and I would certainly hope that the gaps can be narrowed. I would like to hope that we can have similar dialogues between indigenous leaders and government leaders and officials at different levels.

CHT ACCORD AS ROLE MODEL

As mentioned by the Rapporteur Lars Anders Baer, and the chairperson, Mirna Cunningham Kain, the CHT Accord can serve as a role model for other countries and regions, at least with regard to its contents. The provisions on (i) the resolution of land disputes through an inclusive commission invoking customary law; on (ii) indigenous justice systems; and on (iii) the recognition of customary law, are examples of legal recognition of indigenous peoples' rights that are worthy of replication in other parts of the world. Implementation, however, is another matter altogether.

THE “HALF-EMPTY” VERSUS “HALF-FULL” GLASS: THE UNIMPLEMENTED PROVISIONS

The question of implementation and non-implementation may be looked at as the “half-full” versus “half-empty” glass. The representative of the Government of Bangladesh has drawn our attention to what is inside the “half-full” glass: the birth of new institutions (like the Ministry of Chittagong Hill Tracts Affairs), the passage of laws and on development allocations, while many of the indigenous and other participants at the discussion on the agenda item today have conversely referred to what is *not* inside the “half-empty” glass. Unfortunately, as pointed out by Rapporteur Baer and the indigenous and NGO participants today, many crucial provisions of the Accord remain unimplemented or inadequately addressed, including on (i) de-militarization; (ii) rehabilitation (particularly of internally displaced indigenous persons); (iii) land dispute resolution, and (iv) devolution to autonomous regional and district-level councils. In addition, following the spirit, if not the letter, of the Accord, the matter of impunity for human rights violations, remains glaringly un-addressed.

DYSFUNCTIONALITY OF THE LAND COMMISSION

The representative of the Government of Bangladesh mentioned that the non-functioning of the CHT Land Disputes Resolution Commission was caused by the non-cooperation of the “tribal members” of the commission. As an ex-officio member of this commission – along with the two other traditional chiefs or rajas, and the indigenous chairpersons of the regional, and district, councils – I can say that this is definitely not the cause of the main problems concerning the commission’s work. In fact, it is the unilateral and undemocratic activities of the commission’s chairperson, bypassing the indigenous members, who has purported to focus the commission’s work on land survey (which the commission is not mandated to do) instead of dispute resolution (which is the mandated function of the commission), that is one of the major problems concerning the commission’s work.

TERMINOLOGY: ‘INDIGENOUS’, ‘TRIBAL’, ‘MINORITIES’

The issue of the mandate of the Forum on ‘indigenous issues’ and the identity of indigenous peoples from different countries, including Bangladesh, perhaps needs to be clarified. The Permanent Forum deals with issues of indigenous peoples, but indigenous peoples on different countries may be known by names other than indigenous, including ‘tribes’ or ‘ethnic minority’, or otherwise. Despite the use of such varied terminology, these peoples are, and will be regarded as ‘indigenous’ by the Permanent Forum within the meaning of its mandate on ‘indigenous issues’.

The ILO Conventions on Indigenous Peoples (Nos. 107 and 169) mentions both ‘indigenous’ and ‘tribal’ groups but clarifies that the provisions of both conventions apply equally to both groups, indigenous or tribal, equally. Therefore, the current regime of international human rights law (including the ILO Conventions and the UNDRIP) does not distinguish between tribal and indigenous peoples, with indigenous peoples being the currently accepted terminology. Therefore, the CHT Accord and issues of indigenous peoples in different countries (whether called ‘minorities’, ‘tribal’ or otherwise) are undeniably within the mandate of the Permanent Forum.

ASSYMETRICAL PARTIES TO ACCORDS & THE UN PERMANENT FORUM AS THE APPROPRIATE FORUM TO ADDRESS ACCORD-IMPLEMENTATION

When dealing with problems related to implementation of peace accords, such as the one on the Chittagong Hill Tracts, it is important to bear in mind the asymmetry in the status of the two parties to an accord: the state party and the non-state party. The non-state party, once it carries out its part of the deal – namely, to deposit arms, cease fighting and return to normal life – is decidedly the weaker party, who must then wait for the state, the stronger party, to deliver, or not

deliver, what it is supposed to deliver. And if the state reneges on its promises, what can the non-state party do? Where and to whom can it go to for redress? Unfortunately, there is no specific United Nations or other international forum that can address the issue of non-implementation of accords. In fact, the Permanent Forum is one of the few UN bodies that are mandated to deal with the issue: through dialogue and discussion. This Forum is therefore, definitely within its mandate on human rights, and on economic and social development, to deliberate on the matter of peace accords involving indigenous peoples. The Forum should therefore facilitate and encourage more dialogues on peace accords, conflict resolution and peace-building to try and close the gap between parties to accords in its future sessions.

Thank you.