

BANGLADESH

**A Joint Submission
to the United Nations Human Rights Committee**

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Submitted by:

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A Joint Submission to the United Nations Human Rights Committee

1. This particular submission of a coalition of five indigenous peoples' organizations (IPOs), namely Kapaeeng Foundation, Bangladesh Indigenous Women's Network, Bangladesh Indigenous Peoples Forum, Jatiya Adivasi Parishad and Achik Michik Society and one international indigenous rights organisation – International Work Group on Indigenous Affairs (IWGIA), aims at providing an account of the state of indigenous peoples in Bangladesh targeting the review of Bangladesh by the United Nations Human Rights Committee in its 119th Session to be held in 6-19 March 2017. The report provides an opportunity to review the situation of the civil and political rights of indigenous peoples of Bangladesh. The issues and concerns raised in this submission, however, are not exhaustive – this submission particularly focuses on the issues of constitutional recognition, policies and legislations, violence, participation in the public and political life.

Indigenous peoples in Bangladesh: an overview

2. Over 54 indigenous peoples have domiciled in different parts of Bangladesh for generations. They are located in the Chittagong Hill Tract (CHT) and in the northwest (Rajshahi-Dinajpur), central north (Mymensingh-Tangail), northeast (Greater Sylhet), south and southeast (Chittagong, Cox's Bazar and Barisal) of the plains of Bangladesh. According to the 2011 census, the indigenous population of Bangladesh is approximately 1,587,000 which represents around 1.08% of the total population of Bangladesh.¹ However, indigenous peoples claim that their population is estimated at about 3.0 million.² Disaggregated official data concerning different areas of rights, including civil and political rights, of indigenous peoples is unclear and unavailable.

3. The lives of indigenous peoples in Bangladesh are defined by struggle for their survival. Discrimination and routine violations of human rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties ratified by Bangladesh have been inseparable parts of indigenous peoples. Ever since independence of the country in 1971, indigenous peoples have experienced numerous incidents of mass killings, extra-judicial killings, communal attacks, arbitrary detentions, enforced disappearances, rapes and other forms of violence. In this relentless stream of violations of their civil and political rights, land has played a major role. Land grabbing and associated violence and harassment in the name of in-migration programmes, eco-parks, national parks, social forestry, reserved forests, tea estates, tourism centres, extractive industries and even the establishment of bases of security forces have pushed the survival of indigenous peoples under threat.

Constitutional recognition of indigenous peoples

4. The Constitution of Bangladesh (Articles 27 and 28) guarantees equality of all citizens and prohibits discrimination on the grounds of religion, sex, caste, race and place of birth, and stipulates 'affirmative actions' in favour of the 'backward section' of the citizens. However, the supreme law of the country does not recognise indigenous peoples in the country as

‘indigenous’. In the 15th amendment of the Constitution, passed on 30 June 2011, the government ignored the demand of indigenous peoples for the recognition of their fundamental rights including their identity as ‘indigenous peoples’. The 15th Constitution [Article 23(A)] basically recognises the *culture* of indigenous peoples stating that “the State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities”. At the same time, it ignores their right to land, self-determination and participation in political and decision making processes. Further, the 15th Constitution [Article 6(2)] states that “the People of Bangladesh shall be known as Bangalees as a nation” ignoring the distinct identities of indigenous peoples and other ethnic minorities in the country. It is mentionable that neither the terminologies “tribes, minor races, ethnic sects and communities” have been accepted by indigenous peoples, nor have they agreed with the State-imposed identity as ‘Bangalee’.

Legal and policy frameworks

5. Aside from the ICCPR, Bangladesh ratified all the major international human rights treaties. Soon after liberation of the country, it ratified the International Labour Organization Convention on Indigenous and Tribal Population 107 (ILO C107) (1972). However, Bangladesh has not properly implemented the provisions of this convention yet, in order to bring a positive change in the state of civil, political and other rights of indigenous peoples on the ground. Concerning indigenous peoples, the 7th Five Year Plan of the Government of Bangladesh pledges, “Legal protection ensured by 1) implementing the UN Declaration on the Rights of Ethnic Groups Peoples 2007 and ratify the International Labour Organization Convention No. 169, 2) formulating a land policy to deal with land disputes involving ethnic communities and finally 3) ensuring the participation of local governments in the management of natural resources.”³ However, the Government has neither ratified the International Labour Organization Convention No. 169, nor has it undertaken any material steps for implementation of the United Nations Declaration on the Rights of Indigenous Peoples as yet. The promises remain merely on papers to date.

6. As far as the domestic laws and policies are concerned, the Government of Bangladesh has made significant progress in formulating a number of laws that are pertinent to protection of civil and political rights of the citizens of the country. While it is commendable that the State has come forward to address different issues facing people in the country, their proper and impartial enforcement has always remained very limited. In addition, a number of laws, such as Information and Communications Technology (ICT) Act 2006 (Amended 2013), Anti-terrorism Act (2009) and Foreign Donations (Voluntary Activities) Regulation Act 2016, have been criticized by the citizen groups for contributing in reducing space for the rights of freedom of expression and association. Furthermore, almost all the domestic laws concerning different areas of rights, including civil and political rights, do not have any specific provisions concerning the issues of indigenous peoples to address specific issues of indigenous peoples.

Religious persecution

7. The position of the Government concerning the freedom of religion and other beliefs is not clear, especially in the context of indigenous peoples and other religious minorities. The Constitution of Bangladesh [Article 2(A)] declares Islam as the state religion, although it provides equal status to other religions. Persecution against religious minorities have been a

common phenomenon over past few years. Prior to the second cycle of Universal Periodic Review (UPR) of Bangladesh in 2013, massive communal attacks on more than 25 Buddhist and Hindu temples took place in Ramu, Cox's Bazar. Bangladesh accordingly received recommendations on protection of 'religious minorities' from Austria, Canada and Japan.⁴ Since then there have been different incidents of religious persecution in the Bengali Hindu and indigenous inhabited regions. Such incidents include destruction of Buddhist and Hindu temples, killing of Buddhist monks, attempted killing of Christian priests, harassment of monks and devotees, knocking down Buddha statues, preventing construction and renovation of temples.⁵ For example, in April 2014, local administration and security forces of Dui-Tilla camp allegedly barred the local indigenous peoples from constructing a statue of Lord Buddha at Ajalchug Kyang are of Baghaichari Upazila under Rangamati. The upazila administration imposed section 144 (unlawful assembly) for an indefinite period with the intend to stop indigenous people from constructing the statue.⁶ On a different occasion, in July 2014, local administration and security forces prevented indigenous people from erecting a statue of Lord Buddha at Gangaram Doar area under Sajek in Baghaichari. Police tried to prevent the construction of the statue by encircling the area.⁷

8. Similar incidents were sighted throughout the year 2016 too. On 21 October 2016, security forces from Boga Lake camp in Ruma prevented indigenous Marma villagers from building a Buddhist temple at Boga Lake area under Ruma upazila in Badarban district. On 2 October 2016, a group of Rohingyas and local fanatic elements made a joint attack upon Raja Para Buddhist Temple of Banapur Bazar under Fasyakhali union in Lama upazila and miscreants broke the Buddha statue and stole valuables of the temple. In December 2016, Border Guard Bangladesh members of of Ruilui Camp did not allow indigenous Pangkhua villagers to build a Church house at Ruilui under Sajek union of Baghaichari upazila in Rangamati district. On 14 May 2016, a Buddhist monk named U Damma Oaing Cha Bhikkhu alias Mong Chio Chak, 73, was hacked to death at Baishari of Naikhyongchari upazila in Bandarban district.⁸

Violence: arbitrary detention, torture and killing

9. On 24 May 2016, a four-member bench of the Appellate Division of the Supreme Court (SC), headed by Chief Justice Surendra Kumar Sinha, upheld a High Court (HC) verdict that was delivered in 2003 to bar law enforcement agencies from making arbitrary arrests on suspicion and torturing detainees on remand. In fact, the judgment upheld fundamental rights of the citizens enshrined in the constitution. However, many incidents of extrajudicial killings upon indigenous peoples, religious and sexual minorities and mainstream population took place in 2016. Kapaeeng Foundation documented the killings of 21 indigenous persons, including 6 women, in the CHT and the plains since January – December 2016.⁹ The most horrible incident was killing of 3 Santals of Sahebganj-Bagda Farm area under Gaibandha by police firing on 6 November 2016.¹⁰

10. The rights defenders working for the protection and promotion of the rights of indigenous peoples and their advocates have been at the risk of becoming criminalized, and thus resulting in arrests, detentions, enforced disappearances and killings. Over the recent years, atrocities carried out against indigenous peoples including members and activists of the Indigenous Peoples' Organizations (IPOs) at the district level, allegedly being perpetrated by the state forces in collaboration with local leadership of the ruling party, has alarmingly escalated. The forms of atrocities include carrying out raids, ransacking of houses, filing 'fabricated' cases, arbitrary

arrests and collection list of members and supporters of IPOs, with the aim to create terror and harass them.

11. According to Kapaeeng Foundation, in 2016, ‘fabricated’ cases have been filed against at least 191 members of IPOs and individual indigenous human rights defenders and innocent indigenous villagers including over a dozen public representatives of CHT Regional Council, Upazila Parishads, Union Parishads and traditional institutions (headman), while 80 activists including two chairmen of Upazila Parishad and a member of Union Parishad were arrested and 81 persons were detained for a few hours.¹¹ For instance, Apanda Tanchangra alias Paran, 24, was apprehended allegedly by security forces from Rowangchari bus station in Bandarban district on 6 December 2016 and produced before court after keeping him in the custody of security personnel for a week.¹² This is direct violation of Article 33(2) of the Constitution that stipulates, “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate”. Similarly, Milan Chakma, 35, was apprehended by security personnel from Thanchi upazila and released on 11 December 2016 after having brutally tortured in the custody of security forces.¹³ In both the cases, there was no prior allegation against them.

12. As per the documentation of Kapaeeng Foundation, at least 99 indigenous persons were physically tortured and harassed, and 297 houses including a Buddhist temple were searched and ransacked in the searching operation of law enforcement agencies and attack of Bengali ‘settlers’ and land grabbers in 2016.¹⁴ At least 3 communal attacks on indigenous peoples were carried out and their houses and properties were destroyed and looted by fanatic elements, land grabbers and settlers in the same year.¹⁵ As many as 200 houses belonging to indigenous Santals in Bagda Farm-Sahebganj area were set on fire and reduced to ashes by land grabbers in the presence of law enforcing agencies and security forces in Gaibandha district in November 2016. In a video footage viral in the electronic and social media, police are seen to have been directly responsible for setting fire to the indigenous Santal houses in this incident. Following an investigation on the incident, a probe committee assigned by a High Court bench comprised of Justice Obaidul Hassan and Krishna Debnath, came up with the report on 31 January 2017 that three police and one person were involved with the case.¹⁶ Till date no proper investigation, nor prosecution of perpetrators has taken place. Victims have had no form of assistance or compensation from the Government.

Infringement of fundamental freedoms

13. In January 2015, the government issued a memorandum (No. 44.00.0000.079.11.001.13-15 dated: 22.01.2015) composed of 11 directives entitled “Implementation of decisions regarding the visit of foreign nationals to the CHT, having meetings with local tribal people”. The directives include imposing a series of procedures including putting into operation a new rule about foreigners applying for a permission a few weeks in advance to the Home Ministry before traveling to the CHT and non-CHT Bangladeshi nationals requiring the presence of an administrative official/security officer in order to talk to ‘tribals’. These directives violate the freedom of expression, association and assembly of local indigenous peoples, rights activists, civil society organizations, researchers, academics, foreigners and many other stakeholders closely connected to indigenous peoples of the region. The Foreign Donation (Voluntary

Activities) Regulation Act, passed in October 2016, to increase control over the activities of non-governmental organizations (NGOs), may hinder freedoms of expression and association. Proposed amendments of the Press Council Act 1974 may allow the Bangladesh Press Council to hold up the publication of any newspaper or news agency for a maximum of 30 days in case the media agency violates the directives of the council – which will eventually curb the freedom of media.

Political participation and representation in the public life

14. Like other sections of the population of the country, the realization of human rights of indigenous peoples significantly depends upon the degree of their political inclusion. The political participation and representation are important from four points of view. First, the existence of relatively democratic, secular and progressive environment in the country continuously brings along opportunities for indigenous communities to participate in the political sphere through legitimate means. Second, indigenous peoples can put forward their issues and challenges to ensure changes in the policy frameworks as well as on the ground. Third, without the specific and unique knowledge about the lived experiences of indigenous peoples, representatives from outside of the community have little opportunities to appropriately and accurately represent them. Finally, stereotypical attitudes and views towards indigenous peoples greatly hamper the efforts of many indigenous representatives to become closely politically involved. Notably, discrimination is rampant in the behaviours of many non-indigenous public representatives and government officials at the national and sub-national (regional) levels and the attitudes of major political parties.

15. The right to political participation of indigenous peoples is not recognised in the power-sharing mechanisms of the State apparatus of the country. The Constitution of Bangladesh does not acknowledge any special political arrangement for indigenous peoples. There are no reserved seats for indigenous peoples in the parliament and local government bodies. As a result, indigenous peoples have limited participation in most indigenous inhabited areas of the country. This scenario is particularly true for indigenous communities in the plains, because their demographic distribution is very sparse. As an instance, in the last Union Parishad elections held from 11 February to 4 June 2016 throughout the country, no chairman from indigenous communities in the plain land was elected, though more than half of the indigenous population of the country live there.¹⁷ Unlike the plains, chairman candidates belonging to indigenous communities won the elections in the 80 Union Parishads out of 113 in three hill districts of CHT. However, though there is a wide concentration of indigenous population in the CHT, no single chairman candidate from indigenous community was elected in the 7 municipalities (pourasava) elections in CHT held in December 2015.¹⁸ Furthermore, there have been allegations of huge rigging and ballot stuffing by the local ruling candidates in the recently held elections. For instance, in the abovementioned Union Parishad elections in 2016, local leadership of ruling party in the all three districts of the CHT allegedly made huge amount of fake ballots and stuffed them in favour of the local party candidates, which let their candidates to win in most Union Parishad elections in the CHT.¹⁹

16. Regarding the participation in decision-making, in public and professional life, indigenous women especially lag behind men and mainstream female counterparts. Their participation is lacking in the judiciary as well as in civil services, administration and elected positions at local and national levels. For instance, 50 out of 350 seats in the National Parliament are reserved for

women to ensure representation of women in the national policy-making process. None of these seats are reserved for indigenous women in Bangladesh. No indigenous woman has so far been directly elected as member of the Parliament since the liberation of the country. Currently, no indigenous woman is holding any position in the Parliament.

17. Despite the fact that there are reserved seats for women in the local government bodies – Union Parishad, Upazila Parishad and Municipalities (pourasavas), there are no reserved seats exclusively for the indigenous women. Consequently, while indigenous women in parts of the CHT get the opportunity to a certain extent to contest and be elected in the reserved seats for women, in general because of their demographic concentration, indigenous women in the plains are virtually deprived from this opportunity as most of them are scattered all over the region and outnumbered. In 2014 Upazila Parishad Elections, 17 posts of vice chairmanship (reserved for women), out of 25 Upazila Parishads in the CHT were captured by the indigenous women candidates while only 3 posts in plain land were captured by indigenous women despite more than half of indigenous population live in plain regions.²⁰ Likewise, although there is a concentration of indigenous population in the CHT, only three female commissioners (one each in Khagrachari, Bandarban and Baghaichari pourasava) out of 21 reserved seats for women (3 commissioner seats reserved for women in each pourasava (municipality) and there are 7 pourasavas in the CHT) were able to win elections held in December 2015.²¹ No single commissioner from indigenous women from the plains was ever elected in the pourasavas. In fact, the scenario is true for most indigenous communities of the plains and the CHT irrespective of their gender because of demographic domination of majority Bangalee population.

18. Following the signing of the CHT Accord in 1997, the CHT was gifted with a special administrative arrangement constituted of the CHT Regional Council (CHTRC) and three Hill District Councils (HDCs) in the three hill districts of the CHT, which provides the opportunity for political participation of indigenous peoples of CHT by making two-thirds of the seats (including the chairmen of these councils) reserved for them. However, no elections have taken place to elect the representatives of these local government bodies. As a result, the councils are running with interim council members and chairmen. Moreover, the Government is yet to bestow it with powers and functions and transfer all relevant departments/subjects to the HDCs in consonance with the CHT Accord. The Government has not set up any such special administrative arrangements for indigenous peoples in the plains.

Violence against women and the culture of impunity

19. In the State report submitted by the Government of Bangladesh in the second cycle of Universal Periodic Review (UPR) in April 2013, it was mentioned that the Government gives priority to ensuring the protection of women against violence.²² The reviews of Child Rights Committee and Committee on the Elimination of Discrimination against Women held in 2015 and 2016 respectively recommended the government to undertake initiatives to end violence against indigenous women and girls.²³ It is praiseworthy that Government has enacted a number of laws and undertaken initiatives to combat violence against women. However, over the past few years, apparently, the most appalling issue facing indigenous women and girls in Bangladesh is the alarming rate of violence against them and the impunity enjoyed by the perpetrators. According to Kapaeeng Foundation's statistics, from 2007 to 2016, there have been at least 492 reported incidents of violence against indigenous women and girls in Bangladesh.²⁴ The number of unreported cases may be much higher.

20. In comparison to 50 indigenous women and girls who were victims of rape, attempted rape and gang rape as reported by Kapaeeng Foundation, there were 615 victims of mainstream Bengali women and girls reported by Ain O Salish Kendra (ASK) in 2014. It is worth mentioning that 7.52% of the victims/survivors in 2014 were from indigenous communities, who are merely 1.8% of country's total population, while the remaining 92.48% victims were from the Bengali community, who are the majority in the country with 98.2% of the total population.²⁵ From the statistical data given earlier, it is clear that the propensity of committing sexual and physical violence against indigenous women is higher than the violence faced by mainstream Bengali women.

21. Impunity enjoyed by the perpetrators plays a crucial role in this alarming trend of violence experienced by indigenous women and girls. The findings of a report of the CHT Commission reveals that not a single conviction had taken place out of 215 cases occurred in the CHT documented by them.²⁶ The report also claims that "impunity has been the single most crucial factor contributing to increasing incidents of sexual and gender-based violence in the CHT".²⁷ The other reasons behind the appalling state of violence against indigenous women and girls include communal oppression, non-implementation of the CHT Accord, prolonged and non-cooperative formal legal system (including degrading and humiliating forms of providing evidence for sexual assaults) and land grabbing.

22. Land remains in the centre of most cases relating to violence against indigenous women and girls. The land grabbers use the heinous tactics of sexual and physical harassment in order to terrorize the community to unsettle them, and afterwards take the opportunity to occupy indigenous peoples' lands. The rapid expansion of tourism in CHT in the recent years allegedly by military forces and government authorities is contributing to sexual harassment, insecurity, and sufferings for the indigenous women and girls.²⁸ In this regard, proper enforcement of the CHT Land Dispute Resolution Commission Act 2001 (amended 2016) is very important. In August 2016, the government amended this act as per long demands of CHT people. It is hoped that this amendment of the Land Commission Act paves the way for proper resolution of land disputes and restitution of dispossessed land to the indigenous peoples. However, the formation of an independent land commission for indigenous peoples of the plains, which was an election commitment of the current government, remains unaddressed to date.

Recommendations

23. In light of the above situation of civil and political rights of the indigenous peoples in Bangladesh, we urge the UN Human Rights Committee to recommend the following to the Government of Bangladesh:

23.1. Constitutional recognition of the identity, integrity and fundamental rights of indigenous peoples as 'indigenous'.

23.2. Impartial, independent, efficient and transparent enquiries have to be instituted, reports of investigation of violence against indigenous peoples including indigenous women have to be made public, and the perpetrators have to be taken through the process of law in order to bring about an end to the culture of impunity in the country.

23.3. Implement forthwith the ILO Convention No. 107 and frame/reframe national laws affecting the indigenous peoples in the country in pursuant of the provisions contained in the Convention.

23.4. Ensure indigenous peoples including indigenous women's proper participation, representation and partnership in all aspects of the political and public life of the country, including making special arrangements to reserve quota in the Parliament and all local government bodies for indigenous men and women. Ensure the involvement and active participation in the formulation of laws, policies and institutional measures affecting the lives of indigenous peoples.

23.5. Take effective measures for speedy and full implementation of the CHT Accord of 1997 to ensure lasting peace, security and development of the residents of the CHT.

23.6. The government should declare its endorsement of the UN Declaration of the Rights of Indigenous Peoples without delay and ratify ILO Convention No. 169.

23.7. The government is urged upon to enact an Indigenous Peoples' Rights Act and to form an Indigenous Peoples Commission.

23.8. Ensure gender, age and ethnicity disaggregated data of indigenous peoples in regards to different sectors related to their civil and political rights.

Endnotes

¹Bangladesh Bureau of Statistics, available at: <http://www.bbs.gov.bd>.

²Dhamai, Binota Moy (2014) *An Overview of Indigenous Peoples in Bangladesh* in *Survival under Threat: Human Rights Situation of Indigenous Peoples in Bangladesh*, ed. Mong Shanoo Chowdhury, Asia Indigenous Peoples Pact and Kapaeeng Foundation.

³General Economics Division, Planning Commission, Government of the People's Republic of Bangladesh (2015) *7th Five Year Plan FY 2016-FY 2020: Accelerating Growth, Empowering Citizens*, p. 712.

⁴Human Rights Council (2013) A/HRC/24/12, Para 126, available at:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-12_en.pdf.

⁵Coalition of Indigenous Peoples Organizations on UPR (2013) alternative report submitted during the second cycle if UPR, para 33.

⁶Kapaeeng Foundation (2015) *Human Rights Reports 2014 on Indigenous Peoples in Bangladesh*, eds. Mong Shanoo Chowdhury and Pallab Chakma, Dhaka, Bangladesh.

⁷Ibid.

⁸Kapaeeng Foundation (2017) *Human Rights Reports 2016 on Indigenous Peoples in Bangladesh*, eds. Mong Shanoo Chowdhury and Pallab Chakma, Dhaka, Bangladesh.

⁹Ibid.

¹⁰Ibid.

¹¹Ibid

¹²Ibid.

¹³Ibid.

¹⁴Ibid.

¹⁵Ibid.

¹⁶Daily Ittefaq (31 January 2017) *HC accepts judicial probe report on Santal arson*, available at:

<http://www.clickittefaq.com/hc-accepts-judicial-probe-on-santal-arson/>; The Daily Star (1 February 2017)

Gaibandha Attack: HC accepts probe report by judicial magistrate, available at:

<http://www.thedailystar.net/backpage/gaibandha-attack-hc-accepts-probe-report-judicial-magistrate-1354099>.

¹⁷Above n 8.

¹⁸Ibid.

¹⁹Ibid.

²⁰Above n 6.

²¹Kapaeeng Foundation (2016) *Human Rights Report 2015 on Indigenous Peoples in Bangladesh*, eds. Mong Shanoo Chowdhury and Pallab Chakma, Kapaeeng Foundation, Dhaka.

²²National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, State report submitted by the Government of Bangladesh, A/HRC/WG.6/16/BGD/1, 7 January 2013

²³Committee on the Rights of the Child (30 October 2015) *Concluding observations on the fifth periodic report of Bangladesh*, CRC/C/BGD/CO/5; Committee on the Elimination of Discrimination against Women (18 November 2016) *Concluding observations on the eighth periodic report of Bangladesh*, CEDAW/C/BGD/CO/8.

²⁴Above n 8.

²⁵Kapaeeng Foundation (2015) *Human Rights Report 2014 on Indigenous Peoples in Bangladesh*, ed. Mong Shanoo Chowdhury and Pallab Chakma, Kapaeeng Foundation, Dhaka

²⁶Chittagong Hill Tracts Commission (2014) *Marginalization and Impunity: Violence against Women and Girls in the Chittagong Hill Tract*, Dhaka.

²⁷Ibid.

²⁸Chakma, Mangal Kumar and Chakma, Sajib (20 August 2015) *Development and Tourism in Indigenous Territories: Partnership of Indigenous Peoples and Role of the Government*, keynote delivered in a seminar at CIRDAP Auditorium, Dhaka.