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PRESENTED BY R. P. ROY

Agenda Item:
Culture

Statement on behalf of
Bangladesh Indigenous Peoples' Forum, Jumma Peoples' Network International Parbatya Chattagram Jana Samhati Samiti (PCJSS), Peace Campaign Group, Trinamul and Taungya

Greetings from the indigenous peoples of Bangladesh,

One of the most distinctive elements of the culture of indigenous peoples is their own unique juridical systems, including their personal laws, and their systems of adjudication, arbitration and dispute resolution. In many parts of the world, especially in the industrialized countries, numerous indigenous peoples' juridical systems have been either de-recognized, or severely eroded. In a few countries, especially in Africa and Asia, indigenous juridical systems are still formally recognized by law. The personal laws of most of the indigenous peoples of Bangladesh, which are predominantly guided by oral customs, are recognized under national Bangladeshi law. In addition, in the semi-autonomous Chittagong Hill Tracts (CHT) region, a judicial system of village elders, headmen and chiefs, and the legislative competence of indigenous-majority district and regional councils, is also recognized under national law.

In Bangladesh, we indigenous peoples feel that the maintenance, recognition strengthening of our customary laws and judicial systems is vital towards the protection of the cultural identities and worldviews of our different peoples.

Let me first offer some recommendations, including our support towards some of the recommendations coming forth from the *Expert Seminar* convened by the UN High Commissioner for Human Rights in Madrid on 12-14 November, 2003, a summary of which is available at UN Document E/CN.4/20004/80/Add.4

In particular, we draw attention to the recommendations contained in paragraphs 25, 30 and 34, which provide, among others for: (a) non-intervention by outsiders to indigenous peoples' dispute resolution mechanisms; (b) for states to take into account indigenous peoples; customary laws in applying national laws and regulations to indigenous peoples; and (c) for the UN Working Group on Indigenous Populations to prepare a study on indigenous peoples and the administration of justice. Some studies on this subject have recently been undertaken, such as by the Saami Council with the support of the European Commission and the Government of Sweden, and this is encouraging. However, for authoritative and extensive work, there is no alternative to a study sanctioned by the UN itself.

The above measures are in conformity with article 33 of the UN Draft UN Declaration on the Rights of Indigenous Peoples, which provides that:

> "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards" [Article 33, DDRIP]

This article suggests, amongst others, that where customary law does not conform with international human rights standards, such as for example, the provisions CEDAW with regard to discrimination against women, we should do something to change the situation.

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The customary laws of the indigenous peoples have many positive aspects, as I will mention later, but there are some aspects of what is now regarded as customary law, which are not desirable. These include the practices of polygyny (men marrying many wives at the same time), and the practice of denying equitable inheritance and child custody rights to women). On the other hand, among the matrilineal Khasi and Garos, members of which peoples are also included in our delegation , only the women inherit.

In the Chittagong Hill Tracts, we are trying to mobilize to outlaw polygyny and inequitable inheritance and related laws. We are seeking to bring forth consensus for reforms, but are determined to go ahead even if all do not agree. However, we want to do it through our institutions, and not through the national legislative bodies, over which we have little influence, and are unlikely to be able to influence in the future, should we want to make further reforms. This, Mr. Chairperson, is one of the strengths of customary law. We can be more flexible and quick than national legislative bodies in making reforms. Although *some* of our people have suggested for a formal codification of our laws in the interests of certainty and uniformity, many more are probably in favour of merely formally recognizing and compiling such laws into compendiums, rather than reducing it into a formal code. Let us not forget, we indigenous peoples have little or no influence over national legislative bodies. WE do not want to give up our juridical self-determination.
However, consensus, and consent, Mr. Chairperson, are extremely important. Without it, it is difficult to change society. Without it, it is difficult to eradicate discrimination even if it is sanctioned by state law and international law. Such is the case with the international treaties of CEDAW and CERD.

Despite certain provisions that we like to reform, we are proud of our customary laws. We are proud of our democratic and consensual dispute resolution systems that are sometimes far superior to formalized litigation systems with hired lawyers. In most cases of family disputes, we try to produce winners on both sides, rather than one winner and one loser. Moreover, our systems also provide ways and means for the disputing parties to rehabilitate themselves within their families and their communities. Many of such holistic dispute resolution, retributive and rehabilitation-oriented mechanisms are packaged in one set of practices, in a participatory manner. Maybe it is these that have occasionally been re-introduced within mainstream juridical systems and re-named "alternative dispute resolution mechanisms" or "arbitration" proceedings.

Many of these practices that are valuable to both indigenous society and greater society worldwide will be lost, as will be the cultural integrity of different world views. That is why the recommendations that we made at the beginning are crucial to us.

Thank you, Mr. Chairperson.