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**Agenda Item 8:
Study on best practices and examples
in respect of resolving land disputes and land claims**

**Intervention by:
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THE STUDY ON LAND CLAIMS & LAND DISPUTES

Along with my esteemed colleague, Simon W M'viboudoulou, member, UNPFii, I was to have concluded and presented a study on *best practices and examples in respect of resolving land disputes and land claims, including consideration of the National Commission on Indigenous Peoples (the Philippines) and the Chittagong Hill Tracts Land Dispute Resolution Commission (Bangladesh) and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights* at this session of the Forum.

Unfortunately, we could not conclude the study this year. We will conclude it and present it at the 13th session of this Forum, in 2014. Meanwhile, I wish to share some of the highlights of the draft study from Asia.

LAND CLAIMS TITLES: NATIONAL COMMISSION ON INDIGENOUS PEOPLES, PHILIPPINES

The process of settlement of land claims of indigenous peoples by the National Commission on Indigenous Peoples (NCIP) in the Philippines is based upon the provisions of the Constitution of the Philippines with regard to indigenous peoples/indigenous cultural communities and the Indigenous Peoples Rights Act, 1997 (IPRA).

The NCIP provides two types of title. *Certificates of Ancestral Domain Title* or CADT are provided to indigenous communities for their territories or ancestral domains, without requiring delineation. *Certificates of Ancestral Land Title* or CALT, on the other hand, are provided to indigenous families or clans, after the lands concerned are delineated.

No doubt, several challenges remain with regard to operationalization, but the NCIP experience is certainly a case worthy of emulation elsewhere.

SETTLEMENT OF LAND CLAIMS BY DISTRICT COUNCILS & TRADITIONAL CHIEFS IN THE CHITTAGONG HILL TRACTS, BANGLADESH

The semi-autonomous administrative system in CHT has a number of safeguards whereby land claims of indigenous peoples are settled by the CHT administrative system, including its hill district councils (HDCs) and the traditional system of Chiefs and headmen. In accordance with the law on the HDCs (HDC Acts, 1989), no lands may be settled, leased out, compulsorily acquired or otherwise transferred without the prior consent of the respective HDCs.

Therefore, indigenous authorities – the Chiefs and headmen – are free to resolve land claims and regulate the custom-based ownership and use of untitled lands, under the supervision of the respective HDCs and the District Administrations.

Similarly, the traditional Chiefs and headmen resolve civil disputes, including land-related disputes, along with minor criminal matters, on account of the CHT Regulation, 1900 and other laws, customs and usages of the region.

RESOLUTION OF LAND DISPUTES BY CHITTAGONG HILL TRACTS LAND DISPUTES RESOLUTION COMMISSION

As one of major steps to resolve longstanding disputes over land, including those between indigenous peoples and non-indigenous settlers, a Commission on Land – the CHT Land Disputes Resolution Commission – was established in 1999. Subsequently, the CHT Land Disputes Resolution Commission Act of 2001 was passed to formalize the process. Although called a commission, the mandate of the commission is to act as a tribunal, and provide legally binding decisions on land disputes, including to restitute alienated lands, rather than to enquire and report, as ‘commissions’ generally do.

The commission’s mandate and structure fulfill several of the safeguards mentioned in the UN Declaration on the Rights of Indigenous Peoples, particularly articles 26 and 27. It is *inclusive*; having a majority of indigenous representatives as its members. It is obliged to act in accordance with the *laws, customs and usages of the areas concerned*. *Procedural requirements* are to be at a minimum; with no application of civil procedure rules and the service of legal practitioners and time-consuming and expensive processes of litigation through the different tiers of courts. Thus *expeditious dispensation of justice* is expected. The commission’s decisions will have the status of civil courts of law, which the executive arm of government being obliged to execute the commission’s decisions on restituting land, recovery of possession of disposed lands, declaring void titles and so forth. *There are to be no appeals against the commission’s decisions*, although judicial review by the Supreme Court will be accessible.

As in the case of the NCIP in the Philippines, however, the CHT Commission too has its share of challenges in operationalization. One of these concerns the

discrepancy between the provisions of the existing law and the provisions of 1997 Accord.

We have learned that the Bangladeshi cabinet recently approved amendments to the concerned law, but serious concerns have been expressed to the effect that the proposed amendment runs counter to the proposals of the CHT Regional Council in this regard, which were endorsed by the CHT Accord Implementation Committee headed by the Deputy Leader of the House in Parliament, Begum Sajeda Chowdhury, MP, and later further endorsed at an inter-ministerial meeting chaired by the Minister of Law, Justice and Parliamentary Affairs, which was also attended by the representative of the CHT Regional Council and the Circle Chiefs, including myself.

Given widespread concerns about the transparency and inclusiveness of the process of legislation on this matter, I would like to hope that that Government of Bangladesh will defer the passage of the law until the CHT Regional Council and other relevant stakeholders are given an opportunity to express their views on the matter. It is noteworthy that according the CHT Regional Council Act, 1998, the Regional Council has the prerogative of being consulted on all legislation concerning the CHT.

Let us hope that the operational complexities in the Philippines and Bangladesh are addressed through indigenous-governmental partnerships, thereby strengthening their value as role models for other countries and regions of the world, in addition to providing a just process of resolving land claims and land disputes involving indigenous peoples.