

# Research on Land and Human Rights Situation of Indigenous Peoples of the Plain Land of Bangladesh

## TERMS OF REFERENCE (ToR) FOR THE CONSULTANT

### 1. BACKGROUND AND RATIONALE

Around 3.5 lakh<sup>1</sup> Indigenous Peoples (IPs) of plain land in the northern districts (16 districts under Rajshahi and Rangpur Division) of Bangladesh are subjected to various types of violence because of their indigenous identity, of them eviction from land is the most common. Dispossession of traditional land and natural resources is a common problem for the IPs. According to a report, plain land Indigenous Communities including Santal, Hajong, Khashi, Oraon, Dalu, Patro and Pahan lost over 6 lakh bighas of land to the grabbers in last 30 years<sup>2</sup>. In 2014 about 2 families were evicted from their ancestral homesteads, while including 300 families in plain lands are currently facing eviction<sup>3</sup>. The affected IPs in the Dinajpur district are severe victim of such land grabbing by the mainstream influential people.

According to State Acquisition and Tenancy Act of 1950, IP's lands are inalienable to other population<sup>4</sup>. In such a context, the perpetrators resort illicit ways to obtain IPs land which includes forging false land documents, filing false charges against IPs and harass them, physical assault, threatening, rape, arson and destruction of house and properties, and forceful eviction from their ancestral lands. Being marginalized and oppressed for years, the IPs cannot cope with the perpetrators in legal combats to defend their rights. In 2014, around 44 IPs were put into false charges by the land grabbers with an intention to seize their traditional land. A total of 89 families over the year came under attack by the land grabbers to grab land belonging to IPs<sup>5</sup>. Litigation in Bangladesh takes longer time for resolution. The IPs, largely poor and illiterate, find it hard to hang on to the court cases for long. However, land grabbers take this circumstance as an opportunity to put pressure on the helpless IPs and compelled them to sell their properties. When the land grabbers fail to do so, they eventually take coercive actions including murder of the innocent IPs. Besides, their state of marginality alienates them from the community dispute resolution functionaries. As a result, they either do not go for community mediation or if go they are deprived of justice. Ignorance on legal process and land related documents is another weakness of the

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<sup>1</sup> Ethnic Household and Population by Zila, 2011, Statistical Pocket Book of Bangladesh-2103, Published by Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning

<sup>2</sup> <http://archive.thedailystar.net/beta2/news/they-lost-over-6-lakh-bighas-of-land-in-30-years/>

<sup>3</sup> Human Rights Report 2014 on Indigenous Community in Bangladesh; published by Kapaeeng Foundation. See [www.kapaeeng.org](http://www.kapaeeng.org)

<sup>4</sup> [... no transfer by an aboriginal raiyat of his right in his holding or in any portion thereof shall be valid unless it is made to another aboriginal domiciled or permanently residing in Bangladesh who is a person to whom the transfer of such holding or portion thereof can be made under section 90 (article 97, section-2)].

<sup>5</sup> Human Rights Report 2014 on Indigenous Community in Bangladesh; published by Kapaeeng Foundation. See [www.kapaeeng.org](http://www.kapaeeng.org)

IPs. Bangladesh government ratified ILO Convention No. 107 on Indigenous and Tribal Populations in 1972; however, government has not taken any measures to protect the rights of IPs. Moreover, lack of adequate government policy, strong CBOs, vibrant civil society, rights defenders from the community, are other important factors for their vulnerability.

The Constitution of Bangladesh states that “the State shall not discriminate against any citizen on grounds of only of religion, race, caste, sex or place of birth” (Articles 27 & 28). However, the government has failed to make any provision for political, social and economic development of IPs. This exclusion and refusal to provide specific constitutional safeguards have made IPs extremely vulnerable. In fact, in plain land Bangladesh, IPs do not have representations in the Parliament, Upazila Parishad (Sub-district Council) and in the Union Parishad, the lowest representative body. IP’s rights are recognized under ILO Convention No. 107 and 169 and now most recently have been extensively elaborated in the UN Declaration on the Rights of Indigenous Peoples. The article 11 of ILO Convention No.107 ratified by Bangladesh government in 1972, has recognized the rights of IPs on traditionally occupied lands.

### **1. RESEARCH PURPOSE AND OBJECTIVE**

The purpose of this research is to know the status of IPs’ land rights and human rights with special focus on situation of women and use it as advocacy tool for their better improvement. The specific objectives of the research are as follows -

- To record and analyse violation of land rights of IPs which includes encroachment, eviction from land through different forms of illegal actions;
- To collect and analyse different forms (killing, rape, physical assault, harassment, false charges etc.) of atrocity on IPs with women issue in particular;
- Analyse the IPs access to justice , local government services, other rights and entitlement of the government and non-government services;
- To gain understanding of the mainstream community people’s perception on IPs, communication, relation vice versa;
- To generate way forward to ensure land and human rights of IPs, access to service and basic rights of different agencies;

### **2. RESEARCH AREA**

There are 13 Upazilas in Dinajpur district including Biral Upazila, Birampur Upazila, Birganj Upazila, Bochaganj Upazila, Chirirbandar Upazila, Dinajpur Sadar Upazila, Ghoraghat Upazila, Hakimpur Upazila, Kaharole Upazila, Khansama Upazila, Nawabganj Upazila, Parbatipur Upazila and Phulbari Upazila. The research will cover different Upazilas under Dinajpur district inhabited by IPs. The primary data collection will be carried out in specific selected fields in the district.

### **3. THEORITICAL FRAMEWORK**

The philosophical perspective of this research will be based on transformative paradigm, which is appropriate approach to address issues of marginalised people as well as issues of power relation and social justice, discrimination and oppression in the society. The transformative approach is based upon the advocacy works associated with an action agenda to assist deprived and marginalised section of the

society. Based on the transformative perspective, this research holds that, the research studies should be interwoven with the political transformation agendas in order to address the social discriminations and inequality. In this way, the research will uphold an action agenda for a social transformation which will aim to change the condition of the target groups and the institutions in which the people of the society perform their activities. It will focus on the burning issues in a particular social context, such as, empowerment of the marginalised people, existing inequality in the social arena, persecution and hegemony of the dominant people over powerless and underprivileged groups, isolation of the deprived people so on. In this research, the researcher will pursue his research activities in cooperation with the target groups, so that, the research work does not further marginalise the indigenous people as a consequence of this study. In line with this, the research participants or target groups will be involved in designing research questions, data collection and analysis so on. This transformative research will assist the indigenous peoples to raise their voice and increase their awareness to carry out a course of action for the land rights and the human rights agendas to promote a positive change in their lives and livelihoods. The research will become a collective voice for social transformation. Based on the transformative paradigm, the research will give importance to the needs of the marginalised indigenous peoples. To be precise, the research will give paramount significance on the inquiry of the phenomena associated with indigenous peoples who experience historical marginalisation, the circumstances in which their existence are endangered by the power holders and their strategies of resistance against such domination. The research will also focus on discriminatory practices against indigenous peoples based on gender, race, ethnicity, social origin and socio-economic status which lead to an uneven power relationship between the marginalised indigenous peoples and power holders in the state. The perspective of the research will be connected to social and political activism in order to mitigate the discrimination and inequality imposed on the indigenous peoples. <sup>6</sup>

In accordance with the transformative paradigm, the research will be particularly based upon critical theory. Based upon the critical theory, the research will be concerned with the empowerment of the indigenous peoples to overcome the hegemony imposed on them based on race, gender, class, social origin and ethnicity. <sup>7</sup>

#### **4. RESEARCH METHODOLOGY**

The research will be conducted in accordance with the following methodology

- Literature review and secondary data collection
- Analysis of national and international human rights instruments, laws and policies, state's obligation under UN human rights treaties and compliance etc.
- Primary data collection based on quantitative and qualitative research methodologies in selected target areas; a questionnaire will be used (pre tested) for this purpose; data should include as much as possible direct testimonies and stories collection as well as other participatory research methodologies

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<sup>6</sup> Creswell, J. W. (2013). *Research design: Qualitative, quantitative, and mixed methods approaches*. Sage publications. Pp. 38-39, retrieved from [file:///C:/Users/User/Downloads/John%20W.%20Creswell-Research%20Design%20Qualitative,%20Quantitative,%20and%20Mixed%20Methods%20Approaches-SAGE%20Publications,%20Inc%20\(2013\)%20\(1\).pdf](file:///C:/Users/User/Downloads/John%20W.%20Creswell-Research%20Design%20Qualitative,%20Quantitative,%20and%20Mixed%20Methods%20Approaches-SAGE%20Publications,%20Inc%20(2013)%20(1).pdf), 24 July 2016

<sup>7</sup> Ibid, P.98

- Focused group discussion, key informant interview, interview of local government representatives, government officials and representative from NGOs and civil society group

Fieldwork will be carried out in the different areas Dinajpur district selected by the researcher in collaboration with NU and KF. The project team will provide logistic support whenever possible to help the team arrange meetings with target actors, partner organisations, experts, stakeholders or other informants. The report should follow recommendation detailed in the ToR and a first draft should be sent for peer review as per the timing breakdown approved. The final report based on the recommendations and inputs will be sent for final review and approval before the final document is produced. A comprehensive summary of key-findings will be then produced.

## 5. ETHICS AND RISKS

- Conflict of interest should be disclosed.
- Interviews should be conducted with respect to cultural sensitivity of the interviewees and based on a clear consent.
- Interviewees should be informed about the nature of the research, who is conducting it and for whom.

## 6. DELIVERABLES / FINAL REPORT

The overall objective of the researcher will be to deliver a high quality and publishable report, but this project includes various deliverables:

- a. The definitive Research Report should not exceed xxxx pages; appendices can be added in annex. The report should include an executive summary which length should not exceed 3 to 5 pages.
- b. The researcher will be asked to make a comprehensive Public Presentation (research launching) of the final report to development and humanitarian stakeholders. NU and KF will be responsible to organise this event.

### Style and content of the report

Indicatively the report should include an introduction, a review of the available literature, a description of the research purpose, objectives and questions, the methodology applied including the research matrix, guiding questions and questionnaire (in annex), limitations of the study and researcher's profile. The research findings should be presented and analysed according to the research plan, using an accessible and plain language. Conclusions should highlighting and correlate results with the research hypotheses and validate or reject them. The report should include clear and workable recommendations to come over the prevailing situation of IPs in plain lands.

## 7. PROPOSED TIME TABLE

Starting from the selection of the consultants, the suggested timeframe breakdown includes:

Timeline		
Preparation of the inception report	Desk study, literature review, research hypothesis, first stakeholders contacts, identification of target areas for case studies, methodology outline, matrix and question drafting,	7 days

	timetable and workplan	
Filed work	Data collection and analysis	10 days
First draft	Elaboration and delivery of the 1 <sup>st</sup> draft	7 days
Final report	Incorporation of comments received and additions suggested from the review committee and production of the final research report	6 days
<b>Total days of consultancy</b>		<b>30 days</b>

## **8. QUALIFICATIONS AND REQUIREMENTS OF NATIONAL CONSULTANTS**

The researcher will have a demonstrated experience in IPs and social sciences research, in relation with rights of marginalized, minority and vulnerable groups. The research team should include a lead, and the team group should be of at least 2 members (negotiable).

## **9. RESEARCH BUDGET**

The total budget for the research project should be submitted with justifiable break down. Disbursement will be delivered according to a timeframe that will be agreed among the parties