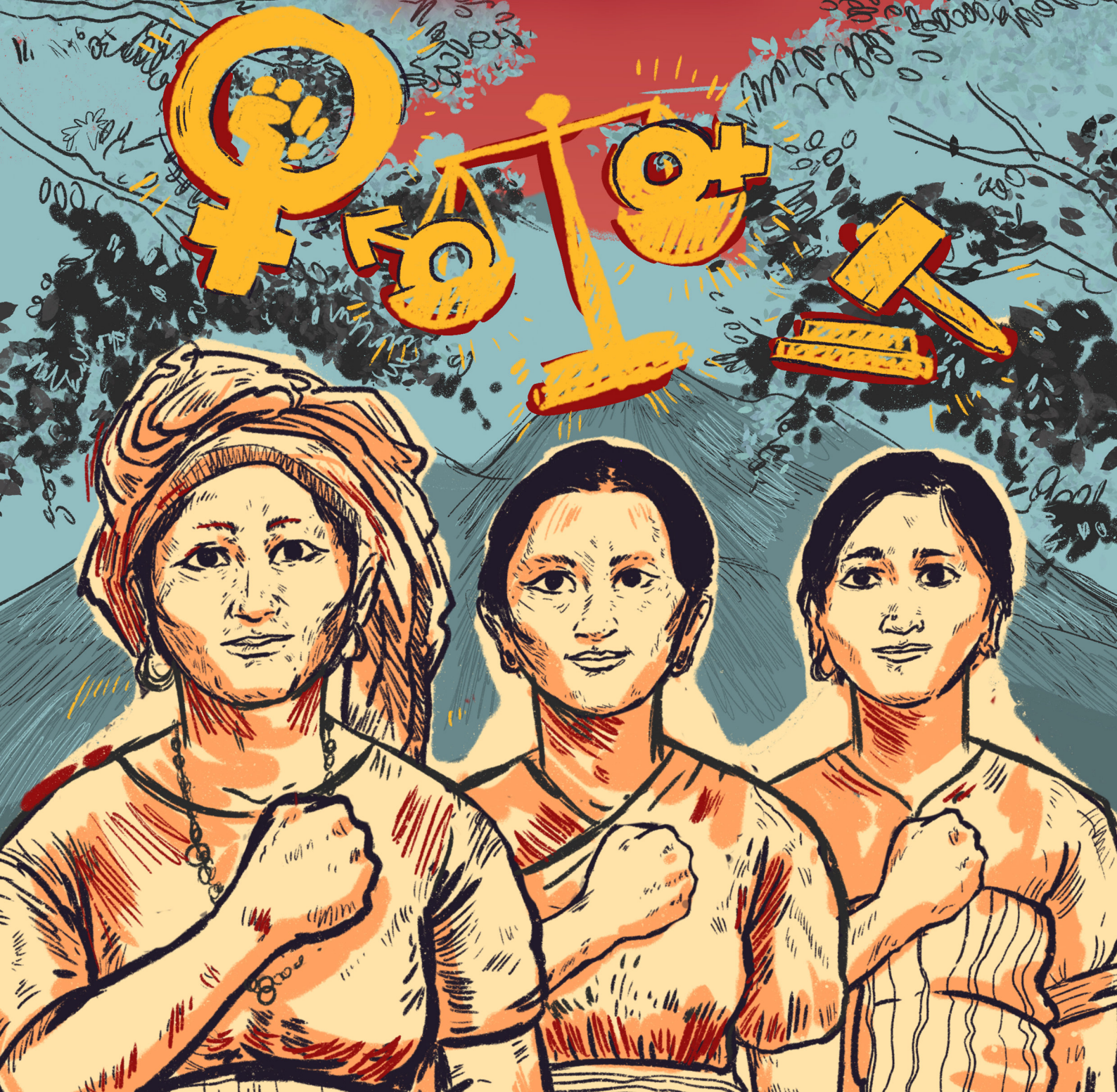




BANGLADESH

Indigenous Women's *Womaniesto* for Equality in the Traditional Justice System



Status of Indigenous Communities and Women in Bangladesh

According to the decision of the United Nations (UN), Bangladesh is set to graduate from its status of being a Least Developed Country (LDC) in November 2026.¹ However, it remains a sobering moment as progress towards gender equality and eradication of gender-based violence (GBV) remains painfully slow. Bangladesh is ranked 152 out of 170 countries in the Women, Peace and Security (WPS) index.² An overwhelming 73 per cent of ever married women in Bangladesh have faced some degree of violence from their current husbands.³ Despite having a woman Prime Minister, women's participation in the national Parliament is low at 20 per cent.⁴

While the overall scenario faced by the majority of women in Bangladesh is grim, indigenous women in the country face added violence and oppression. There are around 54 Indigenous Peoples (IPs) groups in Bangladesh. According to the government's 2011 Census, these groups constitute around 1.5 million people or 1.8 per cent of the national population.⁵ Indigenous groups, however, estimate that there are at least five million IPs in Bangladesh. The undercounting of IPs is symptomatic of the Bangladesh government's secondary treatment of non-Bengali communities. Bangladesh is yet to adopt the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the socio-political and economic life of indigenous groups in the country continue to be suppressed by the state.⁶ This is despite the incorporation of Article 23A in Bangladesh's constitution, through the 15th Amendment passed in 2011, which obliges the government to 'take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities'.⁷

Thirteen indigenous communities live in the Chittagong Hill Tracts (CHT), in Southeast Bangladesh, in the districts of Rangamati, Khagrachhari, and Bandarban Hills.⁸ The region's peoples have struggled against feudal and colonial powers. Despite the important role played by the indigenous communities of CHT in achieving independence for the Bangladeshi nation-state, the people of the region have been oppressed through forced displacement from dam construction, loss of autonomy and heavy militarisation.⁹

¹ United Nations Department of Economic and Social Affairs. (2021, Nov 24). *Graduation of Bangladesh, Lao People's Democratic Republic and Nepal from the LDC category*. <https://www.un.org/development/desa/dpad/2021/graduation-of-bangladesh-lao-peoples-democratic-republic-and-nepal-from-the-ldc-category/>

² Georgetown Institute for Women, Peace and Security. (n.d.). *Bangladesh: Country Profile*. <https://giwps.georgetown.edu/country/bangladesh/>

³ Reliefweb. (2019, Nov 28). *UNFPA Collaborates with the Government to Prevent Gender-Based Violence in Rohingya Camps*. <https://reliefweb.int/report/bangladesh/unfpa-collaborates-government-prevent-gender-based-violence-rohingya-camps>

⁴ Dutta, A., & Khanom, S. (2021, March 16). *The story of women in politics in Bangladesh*. <https://whiteboardmagazine.com/2087/the-story-of-women-in-politics-in-bangladesh/#:~:text=In%20the%20current%20Parliament%2C%2021%20female%20members%20are,demonstrates%20that%20politics%20in%20Bangladesh%20is%20still%20male-dominated.>

⁵ The International Work Group for Indigenous Affairs. (2019, April 24). *Indigenous World 2019: Bangladesh*. <https://www.iwgia.org/en/bangladesh/3446-iw2019>

⁶ The International Work Group for Indigenous Affairs. (2019, April 24). *Indigenous World 2019: Bangladesh*. <https://www.iwgia.org/en/bangladesh/3446-iw2019>

⁷ Government of Bangladesh. (2011, July 7). *The Constitution of Bangladesh (Fifteenth Amendment) Act, 2011*. FAOLEX Database of the UN Food and Agriculture Organization. <https://faolex.fao.org/docs/pdf/bgd117108E.pdf>

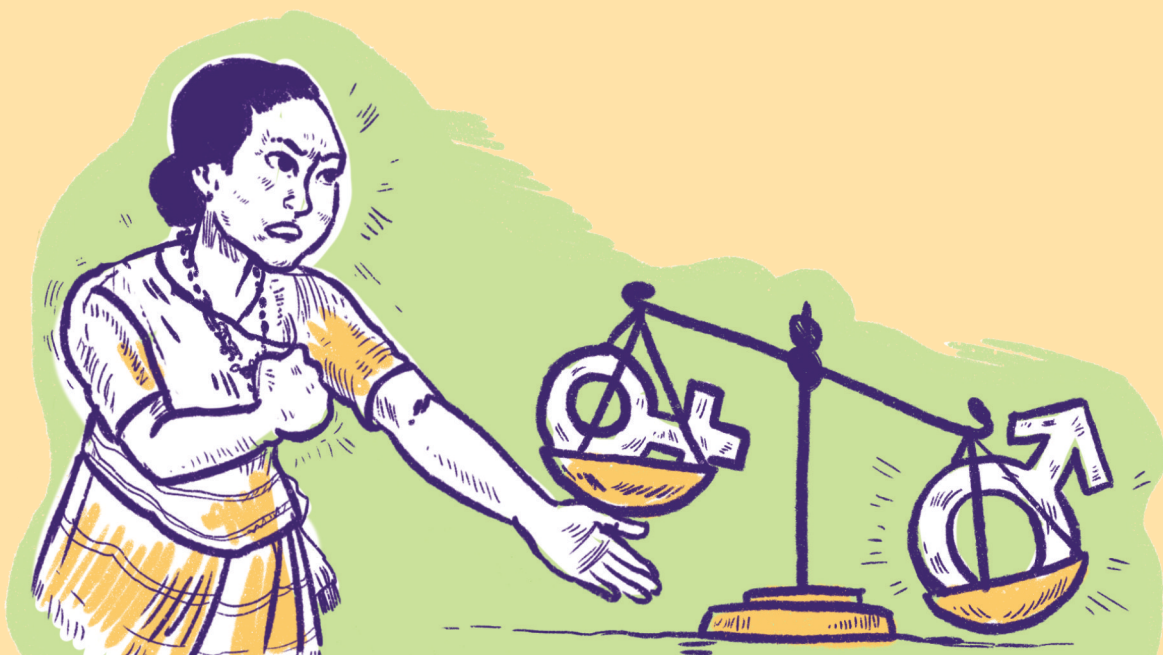
⁸ Uddin, J., Hasan, M., & Miah, M.A. (2010). *Identifying Livelihood Patterns of Ethnic Minorities and their Coping Strategies Different Vulnerabilities Situation in Chittagong Hill Tracts Region Bangladesh*. ResearchGate publications. https://www.researchgate.net/publication/316031750_Identifying_Livelihood_Patterns_of_Ethnic_Minorities_and_their_Coping_Strategies_Different_Vulnerabilities_Situation_in_Chittagong_Hill_Tracts_Region_Bangladesh

⁹ The International Work Group for Indigenous Affairs. (2012). *Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region's Indigenous Tribes*. https://www.iwgia.org/images/publications/0577_Igia_report_14_optimized.pdf

Moreover, Bangladesh's government has failed to implement the Chittagong Hill Tracts Accord, which provides for the protection of the region's peoples and its biodiversity.¹⁰ The indigenous women of CHT have been disproportionately affected by these trends, as gender oppression and violence thrive under conflict and militarisation. Moreover, the patriarchal nature of the tribes' Traditional Justice System (TJS) has further suspended the rights of indigenous women of CHT. The distinct challenges and voices of women from the region tend to be deprioritised in the country's mainstream women's movement. Furthermore, indigenous women's resistance within their communities for the recognition and fulfilment of their fundamental rights over economic resources, or against violence, is often perceived and suppressed as threatening indigenous value systems that are already under heavy pressure from the nation state of Bangladesh.



The customary laws of indigenous communities of CHT, which vary across tribes, are legally binding and recognised under the CHT Regulation Act of 1900.¹¹ They are implemented through a governance system consisting of three circle chiefs, one each for the Chakma, Mong and Bomang circles. All the chiefs are men and known as 'King', who appoint a Headman for each Mouja or cluster of villages, who in turn appoints a Karbari or guardian for each village. The Circle Chiefs and Headman are hereditary titles while the villages sometimes elect their Karbari. When faced with an issue, the IPs approach their respective Karbari. If the problem is not resolved, then the case escalates first to their Headman and then to the Circle Chief. If the issue still remains unresolved, then it progresses to the national judicial system. All of these positions are typically occupied by men, with minor exceptions. The customary laws are discriminatory against women depriving them of basic human rights such as right to property and inheritance. Moreover, the dispute resolution mechanism is also heavily biased against women.



¹⁰ Government of People's Republic of Bangladesh. (1997, Dec 2). *Chittagong Hill Tracts Accord*. <https://peacemaker.un.org/node/1449>

¹¹ Government of People's Republic of Bangladesh. (1900). *The Chittagong Hill Tracts Regulation*. <http://bdlaws.minlaw.gov.bd/act-details-1313.html>

Womanifesto Journey



Photo: Activity during the Womanifesto workshop with indigenous women in CHT.

Indigenous Women of Chittagong Hill Tracts (CHT)

The indigenous women of CHT who participated and led the Womanifesto process, are typically educated until 10th standard and had to quit education due to poverty or early child marriage. They are poor with a monthly household income of USD 100 to 150. However, this did not stop indigenous women from engaging with laws and critiquing its gaps. The Womanifesto process included several meetings where indigenous women shared their experiences of violence and discrimination, learnt about feminist critiques of discriminatory laws and identified their demands. The Womanifesto process enabled many indigenous women to build solidarity networks in and around their areas of residence. This is of critical importance as many areas of CHT remain remote without basic infrastructure, where SPaRC's community organisers have limited access. Moreover, women's mobility in the area is highly restricted due to dense militarisation. Therefore, local solidarity networks of indigenous women can be a critical form of support.

Indigenous women of CHT want equal status, rights and participation in the traditional justice system and customary laws of their communities. Womanifesto is a feminist manifesto of their demands for such reform and change. The Womanifesto process was facilitated by Supporting People and Rebuilding Communities (SPaRC) - an indigenous women-led, feminist organisation. SPaRC is working in the CHT region with indigenous women, supporting and amplifying their movement towards gender justice and women's political participation in the indigenous communities' TJS, which remains highly male dominated. During the Womanifesto journey, SPaRC held a series of meetings, training and dialogues among indigenous women, and other actors such as Circle Chiefs, other male TJS leaders, local politicians and indigenous youth.

Indigenous Women of CHT Raise Priority Issues

Indigenous women of CHT face a constant assault on their agency and human rights. Women who raise their voice against violations are socially stigmatised. Low levels of income and education, remoteness of living areas, lack of access to basic facilities, along with dense militarisation, prohibits women's mobility and access to opportunities. In their Womanifesto journey, indigenous women of CHT have identified the following key challenges in realising their human rights:

❖ **Gender-based discrimination in customary laws:** The customary laws of indigenous communities in Bangladesh are legally binding under the CHT Regulation Act of 1990 which provides a special status to the CHT region - recognising the rights of IPs to their land, customs, culture and traditional systems of administration. It also states that the TJS has the jurisdiction to preside over disputes, particularly family disputes, to be dispensed as per the customary laws of the tribe. While the customary laws are critical for the preservation of indigenous communities' cultures, there is institutionalised gender-based discrimination and lower status for women that is inscribed in the laws. The indigenous communities of CHT are patriarchal and patrilineal. Property is transmitted through the male line. Women do not enjoy the right to inheritance or to own property. Where there are exceptions, such as in the Marma community where women can own property and other economic resources, it depends on the goodwill of parents, brothers or other male inheritors. Given that there is no law that can be invoked for women to inherit property, even in exceptions such as above, it is given as a 'gift/donation'. Moreover, indigenous communities do not allow women to exercise their free will in choosing their husbands or in divorcing them. While an indigenous man can initiate divorce, a woman cannot divorce a man unless the latter is agreeable. It allows men to abandon women as they please, while disempowering women from leaving men, even in cases of abusive or violent relationships.

The oral nature of customary laws also poses unique challenges for women. While the oral tradition makes the system flexible and adaptable, the lack of documentation of laws, of the justice process or of marital relationships disempowers women. For instance, the oral, undocumented nature of customary law allows for every authority (Headman/Karbari/Chief) to interpret the customary law according to their disposition, pronouncing varying judgements on similar issues, with no standardisation to protect women's fundamental human rights. Moreover, since there are no written records of the hearings or judgements, it is also challenging to collect data on women's human rights violations under the TJS. The lack of essential documentation such as marriage certificates also hampers women's ability to seek redressal from the state justice system in cases of Intimate Partner Violence (IPV), since they are unable to prove marital relationship. The lack of marriage certificates also gives impunity to men to abandon their wives as well as children and marry another woman, with little recourse available to the abandoned wives. It also prohibits women from accessing other basic documents such as passports that could open up choices for them.

❖ **Gender-based discrimination in the TJS process:** The process of judicial administration through the TJS deepens the gender-based discrimination faced by indigenous women.

Firstly, most of the Karbaris, Headman and Circle Chiefs are men, with very few exceptions. Not only are all authority holders men, they display very patriarchal mindsets, such that disputes are heard through a singular male perspective. Secondly, the women involved in the dispute are rarely heard or even present during the hearing. Thirdly, even when some women are present during the hearing (such as the few women Karbaris, or other women), they feel social pressure to comply with patriarchal decisions. Thus, there are rarely any voices in these spaces that uphold basic rights of women or demand justice for them. The TJS system ends up victim blaming, disallowing women from leaving their abusive husbands. It is also observed that the TJS system tends to pronounce harsh punishments for women for minor infractions, while sentencing men to relatively low degrees of punishment.

❖ **Impunity enjoyed by men in both TJS and national legal systems:** Justice evades indigenous women in both the TJS and national legal systems. Technically, GBV cases are criminal in nature and do not fall under the scope of TJS. However, such cases are nevertheless settled by TJS (with all of the gender biases and discrimination mentioned above being built into the law and process). Moreover, the appellate system (such that a Chief may override or correct a miscarriage of justice by a Headman or Karbari) is dysfunctional, lengthy and impractical. With such severe lack of accountability, women facing violations of their rights, have little recourse to protection nor achieve justice. Through a 2003 amendment to the CHT Regulation Act of 1990, civil and criminal courts were set up in CHT, granting Joint District Judge original jurisdiction in all civil matters except those arising from family law. However, even these have not provided indigenous women with effective legal remedies, as the national justice system also fails to deliver women's human rights and gender justice. For instance, there have been no punishments or prosecutions in a single case out of the 57 cases filed by indigenous women in the Women and Children Repression Prevention Tribunals of Chittagong Hill Tracts.¹² Indigenous women are caught between two justice systems – traditional and national, and neither serves their interests or protects their basic human rights.



Photo: Indigenous women of CHT preparing a 'power map' impacting their Womanifesto Demands.

¹² Chakma, M. (2014, Feb 14). *Violence against indigenous women rarely get law enforcers' attention*. Dhaka Tribune. <https://archive.dhakatribune.com/uncategorized/2014/02/21/violence-against-indigenous-women-rarely-get-law-enforcers-attention>

Womanifesto: Indigenous Women of CHT Demand Equality Under the TJS

Indigenous women spend their days labouring on land and other natural resources to generate sustenance for their families and communities. Yet, indigenous women are treated as secondary in their communities' laws and justice system. Indigenous women urge all the Circle Chiefs, Headmen and Karbaris in CHT to implement the following demands, in order to secure their human rights:

- ❖ **Ensure that customary laws in property grant equal rights to women and men:** Customary laws of CHT indigenous communities treat women as inferior to men, and need to be reformed to uphold indigenous women's human rights at the level enshrined in national and international law. Inheritance laws of the community need to be reformed to allow women to demand inheritance. Moreover, a woman's right to property acquired during marriage and conjugal life as well as a woman's right to a deceased husband's property, need to be upheld in the communities' laws. Access to control over economic resources, especially when women disproportionately spend their time maintaining it, has to be ensured to increase women's decision-making power in their families and communities.
- ❖ **Ensure rights of women pertaining to marriage:** Laws related to marriage, divorce and custody over children need to be reformed, granting women the same rights as men to marry based on will, to initiate divorce and demand custody over children. This is crucial to ensure that women can have access to their socio-economic rights and are not forced to remain in violent and abusive environments. Furthermore, marriages should be registered and documentation should be provided to women so that they can prove marital relationship in national courts, if required.



❖ **Promote indigenous women’s leadership in TJS:** A discriminatory justice process can undo the gains made by laws that recognise women’s right to equality. Indigenous women’s leadership in the TJS is necessary for making it a fair and just process for women. Having more women as Head of the Mouja (cluster of villages) and Karbaris should be taken up urgently. There is a need to establish the right of women to hold a TJS leadership position even after marriage. Hereditary appointments should be discouraged, particularly when the candidate is not suited to or is unable to fulfil the position’s duties. Instead, leaders should be elected through a fair process and ones who uphold women’s human rights.

❖ **Ensure a gender-just process in TJS:** TJS must be reformed to ensure substantive participation and leadership of women at every stage of the TJS process. Every TJS court should have equal representation of women. The court must ensure that the woman involved in a case is present during the hearing, and that decisions are not made without her voice being heard. A functional appellate system should also be set up, to overturn miscarriage of justice at any TJS level. Written guidelines to standardise TJS’ handling of cases affecting women should also be developed to hold male leadership accountable and uphold women’s human rights in their attitudes, responses and decision-making.



❖ **Undertake complementary measures to support indigenous communities' journey towards gender justice:**

Circle Chiefs need to ensure that their communities and male leaders treat women's demands for reform of the TJS system as legitimate. They should discourage any attempts to misrepresent indigenous women's demands as a threat to indigenous culture or traditions. They must condemn accusations made towards indigenous women leaders and encourage their efforts to set up women's solidarity networks in their areas as a positive development for the whole indigenous community. TJS male leaders must reject patriarchal attitudes that view women as incapable leaders. They must welcome women's participation in the communities' political life, while valuing the knowledge and perspectives that women bring with them to decision-making spaces.





About APWLD

The Asia Pacific Forum on Women, Law and Development (APWLD) is the region's leading network of feminist and women's rights organisations and individual activists. For over 35 years, we have been carrying out advocacy, activism and movement-building to advance women's human rights and Development Justice.

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