





Land and Forest Rights in the Chittagong Hill Tracts

Raja Devasish Roy



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Land and Forest Rights in the Chittagong Hill Tracts, Bangladesh

Raja Devasish Roy

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Editorial Team

A.Beatrice Murray Shrestha (Editor)
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Preface

The ongoing debate on land and forest rights in the Chittagong Hill Tracts Region adds to the growing empirical evidence of the intrinsic linkage between livelihoods, natural resources, and conflicts in mountain areas. The unfortunate history of conflict, its outcome, and the decades of suffering borne by the indigenous people of this region in the Hindu Kush-Himalayas remain largely undocumented. The peace accord of 1997 provides new opportunities to redress the past and to make a new beginning based on principles of equity and social justice.

ICIMOD has recognised the importance of culture, equity, and governance and has placed renewed and increased focus on this area by including the promotion of equality and empowerment of vulnerable mountain peoples to facilitate social security and reduced conflict as a major thematic programme area in its future strategic planning framework.

The proposed programme domain will address issues of gender mainstreaming, rights and access for marginalised people, cultural diversity and heritage, and the role of indigenous knowledge. We remain confident that these initiatives will enable us to make a significant contribution to achieving our institutional vision of prosperous and secure mountain communities committed to peace, equity, and environmental sustainability.

That this paper is being published during the International Year of the Mountains, which has recognised that conflicts in mountain regions have been showing an alarming increase, is timely. We hope that it will make a modest contribution to highlighting the issues and to providing a framework for the future that can bring peace and sustainable development to the Chittagong Hill Tracts of Bangladesh.

Anupam Bhatia

Summary

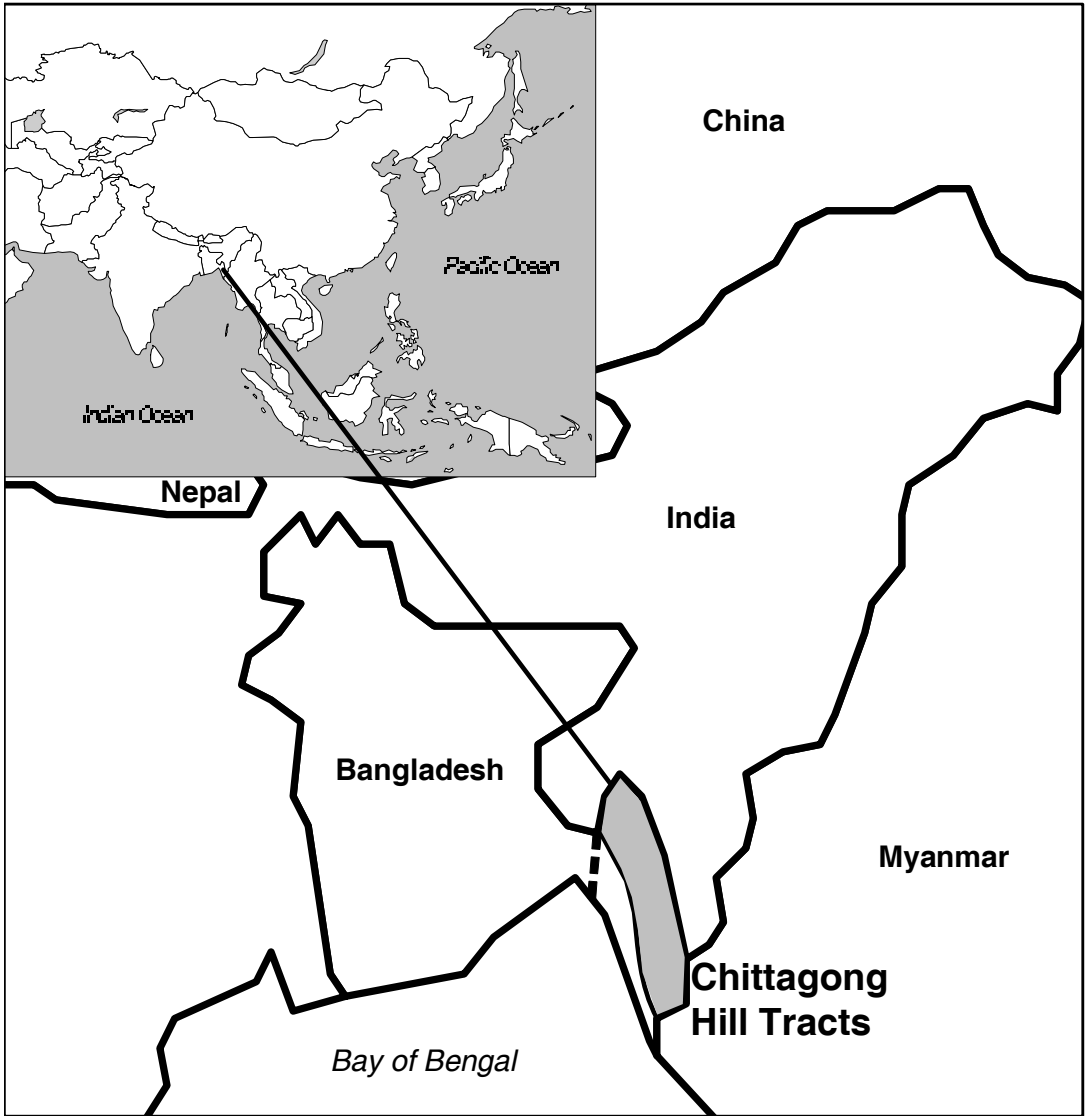
This discussion paper provides a sharp focus on competing claims and differentiated interpretations to land and forest rights in the Chittagong Hill Tracts of Bangladesh. The paper provides a historical perspective of the fallout of armed conflict on people and natural resources, and moves to capture the opportunities made available by the peace accord of 1997 in Bangladesh and the implications for competing interests related to livelihood-based resources that are manifested in the region in conflicts over land and forest rights. The author concludes that a comprehensive policy related to land and natural resources is imperative to ensure equitable and environmentally sound resource use practices in the Chittagong Hill Tracts of Bangladesh.

Acronyms and Abbreviations

ADB	Asian Development Bank
BFD	Bangladesh Forest Department
BNP	Bangladesh Nationalist Party
CHT	Chittagong Hill Tracts
DC	Deputy Commissioner
FDO	forest department official
HDC	Hill District Council
HKH	Hindu Kush-Himalayas
IDP	internally displaced people
ILO	International Labour Organization
JSS	'Jana Samhati Sami', largest party of indigenous CHT people, signed the Peace Accord of 1997
MOEF	Ministry of Environment and Forest
NGO	non-governmental organisation
PF	protected forest
PRF	private forest
RDC	Research and Development Collective, a research-oriented voluntary organisation based in Dhaka
RF	reserved forest
SAFHR	South Asia Forum for Human Rights, a research and advocacy-based voluntary organisation based in Kathmandu
SEHD	Society for Environment and Human Development, an environmental NGO based in Dhaka
SRDI	Soil Resources Development Institute
UPDF	United People's Democratic Front, party of indigenous CHT people which opposes the 1997 Peace Accord as being too weak on hill people's rights
USF	unclassified state forest

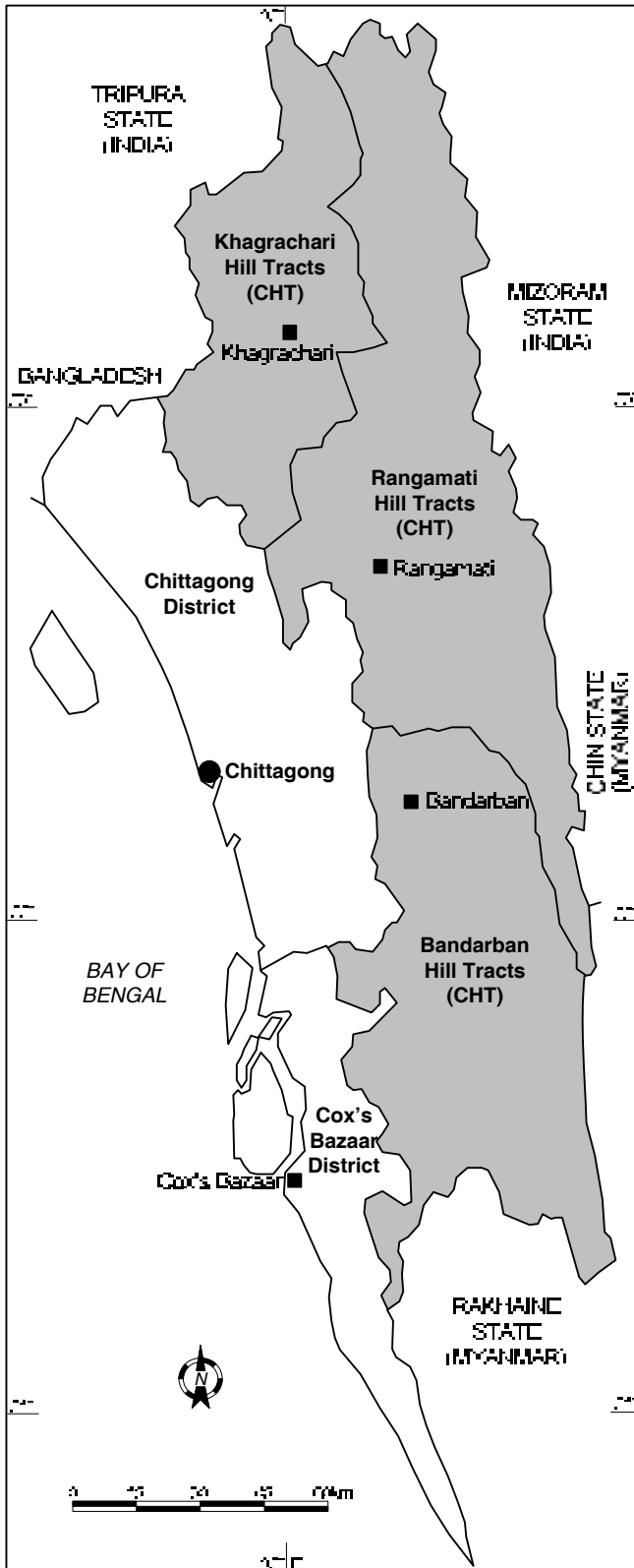
Glossary

jhum	Local term in the eastern Himalayas for swidden cultivation, also known as 'slash and burn' cultivation or 'shifting cultivation.' In south-east Asia, one of its variants is known as 'rotational agriculture'. It involves the cutting down and burning of vegetation. Planting is done by 'dibbling' a small hole with a blunt knife or dibble stick. Ploughing or hoeing, which loosens the soil and leads to soil erosion, is avoided. The crops are fed by rainwater and there is no irrigation.
khas	Public lands not registered in the name of any individual or corporate body, regarded by land administration officials as belonging to the state
mauza reserves	Village common forests outside of the reserved forests
swidden	Common term for slash and burn cultivation, particularly in SE Asia
protected forest	Administered by district collectorates; forest resources controlled and managed by the Forest Department; entry and use permitted unless expressly forbidden
reserved forest	Owned and administered by the Forest Department; no rights of entry or use unless specifically allowed
taungya	An innovative form of agro-forestry based upon the swidden or jhum method of cultivation, whereby "the forest service proposes to farmers that they use forest plots to grow seasonal crops in association with trees during the first years of a plantations' existence" (Kiriinya 1994). The plantation then reverts to the forest service (Forest Department), while the taungya farmers move on to other plots.
unclassified state forest	Partly forested land under the control of district collectorates, considered by indigenous peoples as their own forest and swidden commons



Location of the Chittagong Hill Tracts

The Chittagong Hill Tracts Districts



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Raja Devasish Roy

Usui (Tripura) woman and child

one introduction

The Chittagong Hill Tracts (CHT) is a hilly, forested area situated in the south-eastern corner of Bangladesh bordering India (Tripura and Mizoram) to the north and north-east and Myanmar (Arakan and Chin) to the east. The area is an extension of the Hindu Kush-Himalayan belt, and thus markedly different to the flat delta plains areas of mainland Bangladesh. The CHT covers about nine per cent of the total area of Bangladesh and accounts for slightly more than half the forest lands (SAWTEE 2002). The area was originally inhabited exclusively by some dozen indigenous ethnic groups, but there has been substantial in-migration into the hills from the plains of Bangladesh over the years. The area has been a scene of unrest since the colonial era; from the 1970s armed resistance to the Bangladesh government led to extensive militarisation, many deaths, and considerable displacement of the population (IISH 2001).

A major turning point in the situation came when the Awami League government signed a 'Peace Accord' on 2 December 1997 with Shanti Bahini, the armed force of the indigenous people of the CHT. In addition to laying down terms for re-establishing peace, the Accord recognised the indigenous people's right to land, culture, language, and religion. It is widely thought in Bangladesh that land-related problems have contributed to the longstanding political unrest and conflict in the CHT region. The Accord set out detailed provisions for strengthening the system of self-governance in the CHT, and redressing some of the most urgent land-related problems. These include the resolution of land disputes by a commission on land, the transfer of authority for land administration to the re-organised and strengthened hill district councils (HDCs), the cancellation of leases granted to non-residents during the conflict period, the distribution of land to indigenous¹ or 'tribal' [sic] villagers, and the strengthening of customary land rights. Four years on, however, these problems remain largely unresolved (Roy 2000a). The resolution of land-related problems is deemed crucial for long-term peace in the CHT, an opinion shared by politicians and academics alike (CHT Commission 1991, p 58; Mohsin 1998, p 114). A fragile peace still holds, but tension between the indigenous people and ethnic Bengali settlers regarding land-related disputes has yet to be diffused.²

¹ The term 'indigenous' is not without controversy. In some Bangladeshi laws this word is used (e.g., Act 12 of 1995, Rule 4, CHT Regulations) but in recent legislation the term 'tribe' seems to be more favoured by the government. Throughout this paper, the term 'indigenous' has been used, as it is more acceptable to the people concerned than other comparable terms. 'Hill people' is also acceptable to many. However, the appellation 'tribe' is nowadays rejected by most as racist and derogatory.

² For a recent incident of tension between Bengali and indigenous people in the CHT see *The Daily Star* and *Pratham Alo*, Dhaka, 17 and 18 May 2001. Peace is also threatened by the low-level conflict between two political parties of the indigenous people, the pro-Accord JSS and the United People's Democratic Front (UPDF), which opposes the Peace Accord as too weak on hill people's rights calls for 'full autonomy'.

Rights over various categories of land – including forested land – based upon a competing plethora of laws, customs, different uses, and systems are still strongly contested, especially between indigenous and non-indigenous peoples. The latter include government officials from the Department of Forests, the land administration authorities at the district and sub-district levels, and transmigrated ethnic Bengali settlers. Moreover, indigenous communities in the CHT do not form a homogenous group. They come from eleven distinct peoples or ‘jati’, each of which is further sub-divided into clans and sub-clans with varying cultivation methods and resource management practices, the subtle nuances of which are not easily perceptible to outsiders.

In the case of land categorised as ‘forest’, ironically the situation seems to have worsened in the period *after* the signing of the Accord. Among the most controversial post-Accord developments is the enlargement of the area of Forest Department-controlled reserved forest, or ‘RF’ (Roy 2000e, pp 178-180) and the proposed introduction of a mode of social forestry to be funded by the Asian Development Bank (ADB) that many believe is too state-centric (Roy and Halim 2001a). Recent developments do not suggest that such forest-related problems will be reasonably addressed in the near future. The situation regarding non-forested land is more complex; there being both positive and negative indications. The proposed devolution of substantive land administration authority upon the HDCs, when it actually happens, is expected to be a positive development as this will enable the local people’s representatives in these councils to have the major say over land administration in their respective districts. Similarly, the problem of land dispossession suffered by the indigenous people is also expected to be at least partially redressed through the decisions of the specially constituted Commission on Land. The groundwork for the work of the HDCs and the Commission has been laid through legislation (HDC Amendment Acts of 1998 and the CHT Land Commission Act of 2001), but the HDCs and the Land Commission have yet to start their work. Both of these bodies will have to address highly complex issues, especially where customary laws conflict with formal legislation on land and related matters. Therefore, a purely legalistic approach may be less than adequate to deal with these issues.

This paper attempts to discuss these issues from the perspective of competing rights over CHT land and forest, and the different interpretations of these rights. A brief discussion of the custom-based rights of the indigenous peoples is included as essential background. Some of these have been partially formalised by written legislation; thus the laws sometimes expressly distinguish between the rights of indigenous people (‘hill people’ or ‘tribes people’) and others. However, in some cases the distinction between indigenous people and others is not important, for example where it concerns privately registered commercial lands. Therefore, unless relevant to the context, there will be no distinction made between the indigenous people and the Bengali-speaking people, or the groups and sub-groups within these communities and peoples in other sections of this paper.

historical background of the CHT administrative system

Pre-Colonial CHT

The major topographical frontier of predominantly deltaic Bangladesh starts within the country itself, in the mountainous CHT region. The contrast in the geographical features between the hills and the plains is also mirrored in the different political developments in these regions (Brauns and Loffler 1990, p 27). The CHT is the only region of Bangladesh that was not directly administered by the Government of Bengal (later East Pakistan, and now Bangladesh) until after Bengal itself was colonised by the British. Prior to British annexation, the greater part of the CHT was included in the chieftoms of the Chakma Raja (a Chakma) and the Bohmong Raja (a Marma) (Hutchinson 1978, p 12), while the remainder of the region was included within the smaller spheres of influence of chieftains from the less numerous indigenous peoples (Schendel et al. 2000, pp 25, 29, 32).

The Process of Colonisation

The CHT was colonised in stages over a period of more than two centuries. The voluntary (and irregular) payment of a trade tribute by the more influential CHT chiefs to the Mughal governor of Chittagong can be seen as the starting point of this process (Roy, B.M., cited in Ishaq 1975, pp 34-35). After the British East India Company took over the administration of Bengal from the Mughals in the 1760s, the aforesaid chiefs paid some tributes to the Company, but, as before, on an irregular basis. The administration of the region, however, remained in the hands of the indigenous people. Historical records of the period suggest that “[neither] the Mughal Government nor the East India Company had any direct influence or rule over the hill tribes” (Serajuddin 1971, p 57).

Meanwhile, in the 1700s, Bengali wet-rice farmers had immigrated into the territories of the Chakma and Bohmong Rajas, whose revenue and administrative authority they grudgingly accepted. When the East India Company took over the administration of Bengal, these settlers sought British protection whenever they felt that it was expedient to do so, and even complained of oppression by the CHT chiefs. By the 1770s, Bengali farmers had managed to take over a large quantity of the lands of the Chakmas with the tacit approval of the Company, and showed their interest in living under the Company’s rule (Van Schendel 1992, p 101). Settled Bengali farmers under the direct jurisdiction of the Company would bring in higher revenue earnings than swidden-cultivating hill people, who remained outside the formal rule of the Company and paid nominal tributes rather than substantive taxes, so that these proposed jurisdictional changes suited the British. At the same time, the CHT chiefs’

tributes, which were payable to the Company, had been farmed out to third parties – usually Bengali traders – and these proved to be quite oppressive on the hill economy, prompting the Chakma Raja to refuse payment. Using the complaints of oppression and the ‘non-payment’ of the tributes as an excuse, the British deployed military forces to subjugate the Raja (Serajuddin 1971, pp 43-57). After almost a decade of war, the Chakma Raja Jan Bux Khan made peace with the British, accepting British suzerainty, and paving the way for total annexation of the CHT, including the Chakma, Bohmong, and other territories (Roy 1994, p 53).

Up to 1829, the British East India Company had continued to consider the hill peoples as ‘tributaries’ rather than as ‘British subjects’ and had even acknowledged that it (the Company) had “no right to interfere in their internal [affairs]” (Ishaq 1975, p 28). This state of affairs did not last very long, formal annexation came three decades later, in 1860. The British created a Chittagong Hill Tracts District, which was later demoted to a sub-division.

The gradual but direct colonisation of the region was described by an erstwhile British administrator named Hutchinson in the following manner:

“ the near neighbourhood of a powerful and stable government naturally brought the Chiefs by degrees under British influence, and by the end of the 18th century every leading chief paid to the Chittagong Collector *a certain tribute or yearly gift made to purchase the privilege of free trade between the inhabitants of the hills and the men of the plains*. These sums were at first fluctuating in amount but gradually were brought to specified and fixed limits, *eventually taking the shape not of tribute but of revenue paid to the State* (emphasis added).” (Ishaq 1975, p 28)

Between 1860 and 1937, the British Bengal Government integrated the chieftaincies and other local polities into an administrative set-up that gradually concentrated the most significant powers on the British-appointed district officer while correspondingly eroding the powers of the indigenous institutions. This change was facilitated by two statutes: the Act XXII of 1860 and the Act I of 1900, otherwise known as the CHT Regulation of 1900 or simply as the ‘CHT Manual’. The 1900 Regulation expressly repealed the 1860 Act.

Following independence, the Chittagong Hill Tracts became part of East Pakistan, and in 1971 part of the new country of Bangladesh.

three the peoples of the CHT

Demographic Profile

The majority of the population of the CHT belong to eleven indigenous groups, the Bawm, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mru (Mro), Pankhua, Tanchangya, and Tripura, and hence the region is formally classified by law as a ‘tribal-inhabited area’ (CHT Regional Council Act, 1998). Until 1964 it was constitutionally recognised as a ‘tribal area’ with a separate administrative and political status.³ Each of the indigenous or ‘hill’ peoples has its own language, customs, and cultures. Together, the indigenous people were estimated in the 1991 official census to make up about 51% of the population of the region.



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Usui (Tripura) women

³ Under the Government of India Act, 1919, the CHT was classified as a ‘backward tract’. The Act of India, 1935 changed this to ‘wholly excluded area’, which was retained in the 1956 Constitution of Pakistan. The 1962 Constitution of Pakistan changed the status to ‘tribal area’, but the CHT was removed from the list of tribal areas by the Constitution (First Amendment) Act of 1963.

Table 1: **Ethnic Composition of the Chittagong Hill Tracts Population (1991 Census)**

	Population in CHT	% of Total CHT Population	% of Total Indigenous CHT Pop.
<i>Bawm</i>	6,431	0.65	1.28
Chak	1,681	0.17	0.33
Chakma	239,417	24.60	47.92
Khyang	1,980	0.20	0.39
Khumi	1,241	0.12	0.24
Lushai	662	0.10	0.13
Marma	142,342	14.60	28.49
Mru	22,167	2.27	4.43
Pankhua	3,227	0.33	0.64
Tanchangya	19,217	1.97	3.84
Tripura	61,174	6.27	12.24
Total Indigenous	499,539	51.30	
Bengali	473,275	48.60	
Others	584	0.10	
Total	974,445	100.00	100.00

Source: Revised estimate of 1991 Census from records of the Hill District Council, Comilla

Table 2: **Indigenous and Non-Indigenous Population of the Chittagong Hill Tracts 1872 - 1991**

Census Year	1872	1901	1951	1981	1991
Indigenous	61,957 (98%)	116,000 (93%)	261,538 (91%)	441,776 (59%)	501,144 (51%)
Non-Indigenous	1,097 (2%)	8,762 (7%)	26,150 (9%)	304,873 (41%)	473,301 (49%)
Total	63,054	124,762	287,688	746,649	974,445

Adapted from Sukrawanby (1995, p. 35)

are believed to have excluded the refugees who at that time were sheltering in India. Leaders of various peoples, especially the Mru and Tanchangya, believe that their actual population is more than twice the figure mentioned in the census.⁴ The electoral register suggests that this is more than likely to be true.

In terms of the topographical settings in which the majority of the people live traditionally, we may divide the hill peoples into two groups: the 'ridge-dwellers', namely, the Bawm, Khumi, Lushai, Mru, and Pankhua, and the 'valley-dwellers', the Chak, Chakma, Khyang, Marma, Tanchangya, and Tripura (Sopher 1964, pp112, 114). However, this is only a general trend. For example, different communities of Chakma, Marma, and Tripura, today live in the uplands and highlands as well, while some Pankhua live at lower altitudes near river banks.

Bengali people first began to migrate to the region permanently in the first quarter of the 19th century, and their number has increased greatly since then, especially with the government-sponsored immigration from 1979 to the 80s. Table 1 shows the official figures for the CHT population by ethnic group in 1991 (1991 Census), and Table 2 the ratio between the indigenous and non-indigenous populations from census year 1872 to census year 1991. Table 2 clearly shows the phenomenal growth of the non-indigenous (overwhelmingly Bengali) population of the region.

The figures cited in Table 1 need to be treated with caution. In the opinion of various indigenous leaders, the figures for the indigenous population given in the 1991 census are a substantial under-estimate of the actual population. The Asian Development Bank (ADB)'s survey of 2000 came to the same conclusion. The figures for Chakma, Marma and Tripura

⁴ This is based upon several talks in 2000 and 2001 with Sudatta Bikash Tanchangya, General Secretary, Tanchangya Welfare Association and Ranglai Murung, President, Mru Social Council.

The Socioeconomic and Cultural Situation of the CHT Peoples

The indigenous peoples traditionally depended on swidden cultivation in conjunction with hunting, fishing, trapping, herding, and gathering for their livelihoods. Swidden cultivation, otherwise referred to as ‘slash-and-burn’ or shifting cultivation, is known as ‘jhum’ or ‘jum’ cultivation in Bangladesh and north-east India. In the swidden method, the land is cleared of all forms of vegetation except large trees, during mid to late winter. In the spring, the remains of the vegetation are set on fire. The ash acts as a fertiliser. With the onset of the first rains, small holes are dibbled into the ground and seeds of cotton, rice, pumpkin, melon, and other fruits and vegetables placed in them together. The time of harvest varies from seed to seed. As a soil conservation measure, especially on sloping lands, the soil is always dibbled and never hoed or ploughed. Swidden cultivation is also practised, especially by indigenous peoples, in various tropical or sub-tropical parts of Asia, Africa, and South America. Because of this tradition of swidden or jhum agriculture, which is shared by all the indigenous peoples of the CHT, some indigenous people of the region refer to the indigenous peoples together as Jumma. Then again, because these people live in a hilly region in contrast to the plains regions of Bangladesh, they are also called Pahari, hill people, or hillpeople (Roy 1996).

A growing section of the indigenous population has now taken to non-traditional economic activities such as sedentary agriculture with irrigation and mechanised and non-mechanised ploughing, market-oriented fruit and tree plantations, trading, fishing, and other vocations, including private and government jobs. High population growth, decreased access to lands due to the Kaptai Dam and government forestry programmes, educational progress, and growing integration with the market economy of the plains – and consequently the global economic system – is inducing



Jhum (swidden) field in Khagrachari district

Philip Grain



Raja Devasish Roy

Chilli peppers in a jhum (swidden) field

far-reaching occupational changes within indigenous society. There is a strong shift towards market-oriented occupations and increased instances of multiple-occupational patterns, a trend that is more than likely to continue in an accelerated manner in the near future (Roy 2000c, pp 101-105).

In addition to the hill peoples, a large number of Bengali people – who constitute the majority ethnic group in Bangladesh – also live in the region. The Bengalis were estimated to make up about 49% of the population of the region in 1991. They live almost exclusively in the river valley areas and avoid the uplands and highlands. Socially and economically, we may divide the Bengali population into three distinct groups, although there is some overlap between them. The older settlers of the 19th century are predominantly wet-rice farmers or fisher people, with a few venturing into small trades; the vast majority of the descendants of the economic migrants of the last century are involved in trade and wage labour; and the government-sponsored settlers of the 1979-80s are largely plough farmers, fisher people, and wage labourers. Nowadays, the word ‘settler’ is generally used in the CHT to mean only the government-sponsored in-migrants of the 1979-80s, except by the group concerned.

In the lowlands of the region, most of the communities – both indigenous and Bengali – are settled agriculturists, engaging in wet-rice cultivation, wherever possible, along with fishing. In the lower uplands, plough agriculture is combined with swidden cultivation, tree farming, and horticulture, while the highlands are used almost exclusively for swidden cultivation, although tree farming is steadily growing, as is the market-orientation of the crops grown. Hunting, trapping, gathering, and animal-rearing is common for most indigenous communities in all parts of the CHT, although the herding of bison (*bos frontalis* or mithun) is restricted to the uplands and highlands (Roy 2000c, pp 81-87).

The indigenous communities of the highlands are generally more marginalised than those living in the valley regions in terms of access to land suitable for intensive cultivation and access to health, education, and other extension services. They also face more difficulties with regard to marketing of their farm produce and procuring commodities from market places. The spread of education has led to the growth of a political and economic elite that depends predominantly on jobs for its livelihood and lives mostly in the urban and peri-urban settlements. The impact of traditional customs is less marked among this section of the indigenous population. In the rural areas, village chiefs and elders are still influential among all the indigenous peoples of the CHT, although their influence is nowadays minimal in the towns and other urban and market centres. Most of the indigenous peoples in the CHT profess Buddhism, followed by Hinduism and Christianity. However, most of them retain various practices from their indigenous religions and faiths.



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Usui (Tripura) man, Reingkhong Reserved Forest

Women from the indigenous groups have far more social mobility than women in the plains districts, but that does not mean that their overall situation is less marginalised than that of plains women except with regard to social freedom. The workload of most rural indigenous women is extremely high as they have to tend to the farms, look after their children, and fetch water and firewood, often from far way as a result of deforestation and other ecological changes. Except in the case of some Marma, indigenous women do not inherit immovable property as of right. They are also severely under-represented in both the traditional systems and the formalised and elective regional and local government bodies, except in the case of union and municipality councils, where seats are reserved for them by law. Thus the situation of social, economic, and political disempowerment is a case for serious concern – both for Bengali and hill women (Halim 2002).



Philip Grain

A well stocked forest area in the Chittagong Hill Tracts

four lands and forests of the CHT

Physical Geography and Climate

As its name suggests, the CHT is made up of small tracts of rugged and forested hills with sparse plain lands between. The phrase was coined by the British to distinguish the relatively low hills in Burma (Myanmar) and various parts of South Asia from the higher foothills and mountain ranges of the Himalayas. The hill ranges in the CHT, the Arakan Yoma in Burma/Myanmar, and the ranges within neighbouring parts of north-east India, are part of the chain of hills that are connected to the Himalayas.

The main hill ranges in the CHT criss-cross the region in a north-south direction with the rivers Karnaphuli, Chengi, Matamuhri, Sangu, and Feni and their respective tributaries, and the narrow valleys that contain the sparse flatlands and lowlands of the region, lying between them. The main ranges are around 300 metres above sea level (masl). The highest peaks are concentrated in the north-eastern and south-eastern frontier areas and rise to 1,230m (at Keokradang in the south). The rest of the CHT rarely exceeds 60 masl (Ishaq 1975, pp 1-4). An estimated 80% of the CHT is regarded as hilly or mountainous, with steep slopes. It is relatively young, at about 25 million years old (ADB 2001b, p 6).

Describing the general aspects of the region, a British district officer wrote that the CHT was composed of,

“...a tangled mass of hill, ravine and cliff covered with dense trees, bush and creeper jungle. The intervals between the smaller hill ranges are filled with a mass of jungle, low hills, small water-courses, and swamps of all sizes and description, and these are so erratic in their configuration as to render any uniform description impossible.... Of wild barren scenery the district possesses little or none; but from the summits of the main ranges the view of the apparently boundless sea of forest is grand in the extreme. Viewed from these points, the lower jungle almost assumes the appearance of level green plains, while in reality it is one of the most difficult countries to pass through that can be imagined.” (Ishaq 1975, p1)

Climate

The general climate of the region resembles that of the neighbouring plains, but with some important differences. The highlands are mostly situated above the ‘fog belt’ so the air is drier in winter (December to February) and hotter at the height of summer

(May to August) than in the plains. The winter temperature seldom drops below 15°C, the summer temperature seldom goes above 35°C. Even so there are more extremes of temperature within the CHT than anywhere else in the country, even within the span of one day. The forested areas on the lower hills are generally cooler than other areas of Bangladesh, especially during the winter and the rainy seasons (July to August). Finally, the CHT records some of the highest rainfall in the country. Table 3 shows the average monthly and annual rainfall in Rangamati and Kaptai, both in Rangamati District, over the period 1960-1980, and Table 4 the temperature and evaporation rates in 1990.

Table 3: Average Monthly and Annual Rainfall in mm in Rangamati & Kaptai (1960 - 1980)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
Rangamati	3	13	33	79	235	481	618	328	282	176	35	22	2,305
Kaptai	5	19	23	111	264	624	713	432	354	253	66	25	2,889

Source: Meteorological Department (1991), as cited in ADG (2001b, p 9).

Table 4: Monthly Maximum and Minimum Temperatures and Average Evaporation, Rangamati and Kaptai in 1990

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
T Max	28	32	35	36	32	31	31	31	32	32	30	27
T Min	13	16	20	25	25	25	25	25	24	24	19	15
Evaporation mm	3.7	4.3	4.7	4.7	2.9	1.8	1.6	1.8	2.6	2.7	2.6	2.7

Source: Meteorological Department (1991), as cited in ADG (2001b, p 9).

Lands Other Than Forests

There is both privately owned and public land in the CHT. Private land includes land registered in the names of individuals for homesteads, orchards, and tree plantations; for plough cultivation; and for commercial plots in towns and market centres. Land used for intensive irrigation-oriented agriculture is generally known as 'ploughland', except for that which is submerged for part of the year by the Karnaphuli reservoir (Kaptai Lake), which is known as 'fringeland'. Ploughland is categorised as Class 1 land in the revenue records and is taxed accordingly. In comparison to the rest of the country, the percentage of cultivable land within the region is extremely low (Table 5).

Other land – usually hillside and sloping land – is generally known as 'groveland'. The groveland suitable for relatively intensive cultivation through terracing is known as 'bumpyland' and is categorised as Class 2 land, while relatively steep groveland is categorised as Class 3 land. There are no official estimates of the area of land under horticulture and swidden (jhum) cultivation.

Privately held land may be freehold, with rights in perpetuity; or leasehold, denoting rights over a specified period of years. Many inhabitants (both indigenous and non-indigenous) of the less remote rural areas hold freehold land except in the case of fringeland, which is usually held leasehold. Few farmers hold ploughland, fringeland,



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Privately owned paddy field with village common forest (bamboo brake) in the background

or groveland of more than 5 to 10 acres (2.5-4.5 ha). The vast majority of the indigenous people still do not own registered land. The leasehold plots for industrial and commercial use

(such as for rubber plantations) covering areas from 50 to 100 acres (20.5-40.5 ha) or more are held mostly by non-resident individuals and companies based in cities outside the CHT.

There is little privately held land in the highland areas that lie far from urban and market centres (bazars). In these areas, most of the inhabitants depend upon 'jhum' cultivation as a primary occupation. The swidden and forested land is administered in accordance with customary laws regulated by the headmen and their subordinate village chiefs or elders known as 'karbaries'.⁵ Most of this land is not conducive to intensive (irrigation-oriented) agriculture because of the relative infertility of the soil, the steep slopes, and the lack of water supply. Similarly, because such land is remote from market and urban areas, it cannot be used profitably for market-oriented cultivation such as horticulture, or tree and bamboo plantations.

Table 5: Agriculture Land Use: CHT and Bangladesh 1990-91

	CHT	%	Bangladesh	%
Total Land sq.km	13,295	100	147,570	100
Cultivable Land (1 crop) ha	57,900	4.4	3,294,300	22.2
Cultivable Land (2 crops) ha	22,700	1.7	3,898,900	26.3
Cultivable Land (3 crops) ha	6,100	0.5	981,000	6.6

Source: Sultanzwari (1995), for Rangamati, and data from the Bangladesh Bureau of Statistics (1992), Table 4.7

⁵ A 'karbari' is the village head and is mainly responsible for settling disputes

In a wider sense, public land is all the land not registered in the name of any individual or corporate body. Land administration authorities treat these lands as belonging to the state, which the district collectorate may lease to private owners. In the plains districts, these are usually recorded in the register under Landholding ('khatian') No. 1, denoting ownership by the state. However, much of this khas land may include the forest and swidden commons of indigenous villagers, including 'mauza reserves' (village common forests outside of the reserved forests) administered and protected by headmen in accordance with the CHT Regulations of 1900⁶.



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Ploughed field with village common forest (VCF) in the background

CHT land has also been categorised according to soil variety (Table 6). A team of soil scientists employed by a Canadian company called Forestal surveyed the CHT land between 1964 and 1966. It divided CHT land into five types, the one with the richest soil being Class A and that with the poorest soil being Class D (Table 8). Thus Class 1 land as stipulated in the revenue records may be compared with Class A land according to Forestal, Class 2 land with Class B land, and Class 3 land with Class C, D, and C-D land. Tables 6-8 summarise the soil characteristics in the CHT, and the soil classification as given by Forestal.

Forestal's data, as well as several of their recommendations, were used extensively from the late 1960s to the 1990s by the Government of Pakistan and the Government of Bangladesh for horticulture and forestry projects in the CHT. The data is still of great value for any macro-level plans on land use in the CHT, but needs to be treated with caution for a number of reasons. Firstly, the survey covered only those

⁶ Rule 41A, CHT Regulations, 1900 (Bengal Act I of 1900). See also Roy and Halim 2001b.

Table 6: **Soil Types in the CHT**

Parent Material	Location	Soil series	% of CHT
Hill Soils			
Consolidated shales, sandstones and siltstone (Surma-Tipam)	Higher hill ranges	Sandy loam Silty clay loam	70
Unconsolidated sandstone and siltstone (Dupi-Tila sands and clays)	Lower hill ranges	Sandy or silty loam Sandy clay loam	26
Alluvial soils			
Slope run-off	High river banks, terraces	Silt loam layered with sandy loam	4
Stream-borne sediment	Valley bottoms floodplains	Silty clay loam layered with clay	

Source: Adapted from Forestal (1990) and Brammer (1990) as cited in ADB (2001b, p. 8).

Table 7: **Physical and Chemical Characteristics of Soil and Rock in the CHT**

Soil series	Texture		pH	CEC*	BSP**	C/N ratio	Nutrients (ppm)	
	Silt %	Clay %					P ₂ O ₅	K
Kaptai	65	28	5.9	16.3	50	4.1	TR**	150
Bilaichari	35	10	5.0	9.5	35	5.0	TR	25

CEC = Cation exchange capacity; * BSP = base saturation %; TR = Trace

Source: SRDI (personal communication) as cited in ADB (2001b, p. 8).

Table 8: **Classification of Land in the CHT according to Type (1964-66) (Excluding Area of Reserved Forests)**

Class	Slope %	Total Area (ha)	%	Types of Land Use	Land Use Limitations
A	< 5	30,969	3.1	All-purpose agriculture	Few limitations
B	5 - 20	27,488	2.7	Terrace agriculture	Moderate limitations
C	20 - 40	148,482	14.7	Mostly horticulture, some forestry	Severe limitations
D	> 40	735,882	72.9	Forestry only	Very severe limitations
C-D	40 - 50	12,970	1.3	Horticulture and forestry	Complex of C & D
		53,535	5.3	Settlement and water	
Total		1,009,326	100		

Adapted from Forestal (1990) and Brammer (1990) with sources cited in ADB (2001).

parts of the CHT that are situated outside of the Forest Department-controlled RFs (which cover about 334,160 ha or about one fourth of the region [ADB 2001a, p 16]). Large parts of these reserves are now settled by hill people and cultivated by them, including swidden in the uplands and wet rice and tobacco in the lowlands. It must also be remembered that the different categories of land are not situated in compact blocks in clearly demarcated areas, but are interspersed in different parts of the region, cutting across different geo-physical variables, even within very short distances. In addition, the data are almost forty years old. It is more than likely that at least some important ecological changes, and consequently changes in the soil, must have come about during this period as a result of both natural factors and human intervention. These might include changing precipitation patterns and other climatic

changes, and human interventions such as cultivation, deforestation, lowering and raising of the water level of the Karnaphuli reservoir by the hydro-electric authorities, and the phenomenal growth of the region's settlements and human population. These factors and others – such as unrest, insurgency, dislocation, and distances from markets, roads, and navigable waterways – mean that the actual land use patterns in the CHT today are probably quite different from what the soil conditions as assessed by Forestal might suggest. There are no reliable estimates on this data, but some rough calculations based upon very basic survey methods in limited areas are contained in the ADB's 'Chittagong Hill Tracts Region Development Plan, 2001' (ADB 2001a,b). They are not reproduced here as the samples in the survey were too small to accurately reflect the overall situation, although they suggest certain trends in small pocket areas.

The Government-controlled Forests

About the time of the British annexation of the region in the mid 19th century, the CHT was so rich in forests that the British administrators, eager for revenue, were prompted to categorise four-fifths of the region as 'government forest' (Ishaq 1975, p 107). Most of this forest originally contained tropical and sub-tropical evergreen and deciduous species of trees and other plant life. However, starting in the 1870s, vast stands of natural forests were clear-felled to make way for monoplantations of teak, a species that was imported from Burma (Ishaq p 101, 107). Most of these forests, including the teak plantations, were categorised as RFs. The rights over this type of forest were said to belong to the state alone, rather than as 'concessions' (Roy and Halim 2001a, p 9). The Pakistani government (1947 to 1971) added plantations of pulpwood species to feed pulp and paper factories. The Government of Bangladesh has continued the process on an even larger scale. This has affected the biodiversity of both flora and fauna, in turn affecting the forest-dependent livelihoods of indigenous people (Roy 2000c, p 99, 117). The last major forests of heterogeneous stand are confined to small parts of the Kassalong and Sangu reserves along the frontiers with India and Burma respectively. These forests too are under threat.

Foresters today recognise four major kinds of forest land in the CHT. These are (i) reserved forest or 'RF', which covers about a quarter of the CHT; (ii) protected forest or 'PF' which covered about 1% of the CHT but most of which has recently been re-categorised as 'RF'; (iii) private forest or 'PRF', most of which is owned by small-scale indigenous farmers, except for a few plantations owned by non-resident individuals and companies based in cities outside the CHT (their extent is not known); and (iv) unclassed state forest or 'USF', which covers the rest of the CHT.⁷ It is important to realise, however, that despite their categorisation as forests, most of the land in all categories, including the RF areas, is now bereft of substantial vegetative cover in terms of density, height, or diversity of plant life. The RF areas are owned and administered by the Forest Department. The PFs are administered by the district collectorates, although their forest resources are controlled and managed by the Forest Department. When in an RF area, no manner of entry into or use of lands is permitted unless it is specifically allowed by the Forest Department. One may enter and use PF lands unless it is forbidden to do so. 'USFs' are a residual category of

⁷ The acronyms RF, PF, and USF are well known among foresters, while the acronym 'PRF' has been employed by the author for the purposes of this paper.

partly forested land under the control of the district collectorates which the indigenous peoples consider as their own forest and swidden commons. Table 9 provides an estimate of the different types of forest land in the CHT.



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Partially degraded hill forest

Table 9: Forest Land in the CHT

Classification	Rangamati (ha)	Bandarban (ha)	Khagrachari (ha)	Total CHT (ha)
Gazetted reserved and protected forest (RF + PF)	234,520	74,841	23,151	332,512
Estimated remaining reserved forest (RF)	49,613	–	4,018	53,373
Encroached RF*	2,176	–	–	2,176
Estimated remaining protected forest PF	0	0	0	0
Planted forests (private)	22,259	26,184	8,930	57,373
Unclassified state forest (USF)	322,521	292,522	94,656	709,699
USF notified for reclassification to RF	23,680	27,000	12,660	63,340
TOTAL	579,300	393,547	126,737	1,099,584
Total in district under control of FD (though 'notified' land, not formally 'gazetted')	258,200	101,841	35,811	395,852
Forest area controlled by Ministry of Land	377,521	292,522	94,656	709,699
* Similar activities occur in Bandarban and Khagrachari on non RF lands. Source: FD (Dhaka) as cited in ADB (2001b, p. 18).				



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Traditional houses

five legal and administrative system

Land Laws and Land Administration Authorities in the CHT

The CHT administrative system includes both formal government institutions and the semi-formalised, traditional offices of the ‘circle’ chiefs (rajas), headmen, and village chiefs or elders (karbaries). The CHT legal system incorporates both codified and customary laws. Therefore, the rights over forests and other land may not always be clearly defined as a result of the existence of overlapping rights to the same parcel of land. There are also conflicting provisions in the various laws, including the British-promulgated CHT Regulations of 1900 on the one hand and the Hill District (Local Government) Council Acts of 1989 and the CHT Regional Council Act of 1998 on the other.

Most of the formalised land and forest laws of the region date back to the British colonial period (1860-1947). Although some legal amendments were made during the Pakistani era (1947-1971) and after the independence of Bangladesh in 1971, the pattern of land and forest management has essentially remained as state-centric and colonialist as it was during British times, where the benefit of the policy accrued not to the local people but to the colonising state. However, more recently corruption within the government system means that the most direct beneficiary of land and forest policies is not the state but corrupt government officials and dishonest traders and business people, most of whom are not local.

There are two more important differences between the colonial and the post-colonial time. During the British era, in-migration to the CHT was strictly controlled, and non-residents were not allowed to acquire land rights within the area.⁸ This was the same in various indigenous peoples’ homelands that now form part of north-eastern India. Most of these territories were recognised as ‘fully excluded areas’ in the Government of India Act 1935, and are today governed by the Sixth Schedule to the Constitution of India. People not considered as indigenous to these territories still do not have the right to enter or reside within such states by virtue of the ‘Inner Line’ system. However, in Bangladesh these restrictions were gradually relaxed. The law requiring non-natives to obtain a written permit to enter into the CHT – Rule 52 of the CHT Regulation – was repealed in 1930. Then in 1971, an amendment to Rule 34 of the Regulation allowed land grants to ‘outsiders’ in a restrictive manner. A further amendment to this rule in 1979 watered down this restriction even further. Nowadays, small land

⁸ Similar restrictions on the entry of non-indigenous people and their expulsion from the region were contained in Rules 52 and 51 of the CHT Regulations, respectively. The former was repealed in 1930 and the latter was struck down as unconstitutional by the High Court of Dhaka in 1964.

grants for residential and agricultural use are allowed if the mauza headmen so recommend, but in the case of large-scale leases for commercial ventures, especially if it is for outsiders, it is debatable whether the district collectorate may issue such leases without the concurrence of the mauza headmen. When land administration authority is finally transferred to the HDCs, the HDCs may be free to reintroduce restrictions on land ownership by non-residents. The second important difference to the colonial era is that the administration of the forest areas was far stricter during the British period, when theft and pilfering from the government-managed forests was extremely rare and settlements within the RFs were far fewer.

The CHT has two major systems of land administration, one for the RF areas, and another for the rest of the region. The RFs – covering just below a quarter of the region – are administered by the Bangladesh Forest Department (BFD) under the Ministry of Environment and Forest (MOEF). The rest of the CHT is administered by a medley of political and bureaucratic authorities that include both the traditional institutions of the chief, headmen, and karbaries, and the formalised elective councils of various tiers, from the union to the regional level. The nascent CHT Regional Council is the apex regional body that reports to the newly created Ministry of CHT Affairs.

The land rights regime in the CHT is as complex and pluralistic as many other aspects of CHT administration. Laws applicable to the CHT include written laws passed through formal processes, executive orders of district officials and their senior authorities, and orally inherited traditions, customs, and land uses of the indigenous people. The personal laws of the indigenous peoples of the CHT, including the systems of marriage, divorce, child custody, and inheritance, are regulated by the traditional institutions in the customary way. Within the indigenous population, only the Marma women inherit property along with men, as in the case of Muslim women, although in both cases women inherit less than men. Women from the other indigenous peoples and the Hindu Bengali community are only entitled to rights of maintenance. Conversely, among the Garo (Mandi) and Khasi peoples in north-central and north-eastern Bangladesh, only the women have the right to inherit property.

Customary Laws

In some cases, custom-based rights have been transformed into written laws or have been formally acknowledged by legislation or executive orders. The best example is the right of indigenous people to homestead land and forest resources.⁹ However, most customary land rights remain unacknowledged, both in the forest areas and especially in the rest of the region. Some of the more important of these rights are summarised in Table 10.

The requirement that the mauza headmen be consulted before the natural resources of the mauzas can be utilised may be regarded as an indirect acknowledgement of the indigenous peoples' rights over the natural resources of their mauzas to the exclusion of others. The indigenous people of the rural areas, especially the mauza headmen and the karbaries are usually well acquainted with these customs and practices, but the formal legal status of various other customary rights is still to be defined, as these matters have never been addressed in a detailed manner in statutes and policy guidelines or through judicial pronouncements. A test case will be the

⁹ Rule 41A, CHT Regulations, 1900; CHT Forest Transit Rules, 1973.

Table 10: **Important Customary Resource Rights of CHT Residents**

Natural Resource	Right-Holder	Regulatory Law/Custom	Regulating Authority
Homestead lands	Indigenous family	Rule 50, CHT Regulations	Headman
Swidden (jhum) lands	Indigenous family	Rule 41, CHT Regulations	Headman, DC
Used swidden lands	Indigenous family	Traditional customs	Headman
Forest produce	Mauza residents	Rule 41A, CHT Regulations	Headman and karbaries
Grazing lands	Mauza residents	Rule 45B, CHT Regulations	Headman, DC
Grasslands	Mauza residents	Rule 45, CHT Regulations	Headman, DC
Wild game	Indigenous residents	Traditional customs	Headman, circle chiefs
Marine resources	Mauza residents	Undefined	Headman
Large water bodies	Mauza residents	Undefined	Headman
Smaller aquifers	Mauza residents	Undefined	Headman
Natural resources	Mauza residents State	Standing Orders of DC HDC (Amendment) Acts, 1998	Headman DC

Source: Fry (2004)

decisions of the future Commission on Land (a creation of the CHT Accord of 1997) which is to settle disputes over land while being obliged to take into account “existing rules, customs and usages of the Chittagong Hill Tracts” (Part D, Paragraph 6(b), CHT Accord).

As with the laws, the system of governance and administration in the CHT is also unique to the region, including both traditional authorities and modern state institutions. As in other parts of Bangladesh, in the CHT civil service officials and elected local government leaders of the lower tiers play an important role in local administration and formalised development work, but this authority is shared by the aforesaid officials with two sets of institutions that are present only in the CHT. These include the largely hereditary traditional institutions of the karbari, mauza headman, and circle chief¹⁰ on the one hand, and the three hill district councils and the CHT Regional Councils on the other.

Ordinarily, the supreme power over land administration is formally vested in the government’s district officer, the deputy commissioner (DC). The DC needs to refer to her/his superiors in Chittagong and Dhaka only for land grants for areas over 25 acres (10.2 ha). In accordance with the 1997 Accord, this authority will now be subject to the consent of the HDCs, although this authority is yet to be devolved to them. Table 11 shows the different types of land grants together with the identity of the present land granting authority.

¹⁰ Several villages form a ‘mauza’, which is in charge of a headman (there are more than 350 in the CHT). Apart from supervising the work of the karbaries, the village heads, the headman is responsible for law and order, natural resource management, revenue collection, and advising the deputy commissioner (the government’s district officer) in land and revenue matters. Above the mauzas are the ‘circles’ under the chiefs or rajas, of which there are three in the CHT. Apart from their administrative and judicial functions, the rajas formally act as advisers to the deputy commissioners, the hill district councils, the CHT Development Board, and the Ministry of CHT Affairs.

Table 11: Categories of Settlements and Leases

Use of Land	Identity of Lessee	Nature of Grant	Granting Authority	Amount (in Acres)
Homesland (rural)	Hill people	Freehold	Headman	0.30 acres (0.13 ha)
Homesland (rural)	Any person	Leasehold	DG	Unspecified
Homesland (urban)	Any person	Leasehold	DG	Up to 0.30 acre (0.13 ha)
Plough cultivation	CHT residents	Freehold	DG	Up to 5 acres (2.25 ha)
Orchard plantation	CHT residents	Freehold	DG	Up to 10 acres (4.5 ha)
Commercial plantation	Any person	Leasehold	DG	Up to 25 acres (11.25 ha)
Commercial plantation	Any person	Leasehold	Commissioner	Up to 50 acres (22.5 ha)
Commercial plantation	Any person	Leasehold	Government	Above 100 acres (40.5 ha)
Industries	Any person	Leasehold	DG	5-10 acres (2.25-4.5 ha)

Source: Roy (2000)

Ever since the British period, land grants have usually been made only in consultation with the headmen of the territorial and revenue units known as mauzas. This was deviated from after the independence of Bangladesh in 1971, as will be discussed in more detail below. The mauza headmen are the real pivots of the land and revenue system in the CHT. They are formally government appointees, but their primary loyalty seems to lie more with the circle chiefs or rajas, on whose nomination they are usually appointed, and to their clans and other village constituents (Roy 2000b, p 48).

Administration of Forests

The largest of the RFs in the CHT date back to the British period (1860-1947). These include the Kassalong, the Reingkyong, the Matamuhri, and the Sangu. All these areas are inhabited. The other RFs are far smaller. They are scattered about the CHT and have been largely denuded of their once luxuriant cover, especially since they were converted into plantations of commercially valuable species such as teak. An ADB-funded study in 1976 (Webb and Roberts 1976) recommended that these small RFs be decategorised as forests since they are difficult to protect, being virtually islands of forest in the midst of settled agricultural zones. Foresters, however, did just the opposite in the 1990s by creating new RFs of varying sizes, some barely going beyond a few thousand square metres.

In contrast to the areas outside the reserves, the administration of RF areas has remained virtually unchanged since they were declared as forests during British rule, a process which started in the 1870s. The main difference is that the population of these areas has risen greatly over the last century-and-a-half. The inhabitants of the RFs are subject to the jurisdiction of the ordinary criminal courts and the civil jurisdiction of the government and indigenous courts, but the land and revenue laws

applicable to the rest of the region do not ordinarily apply here. These areas are administered by the BFD to the exclusion of any other authority. No land rights are recognised within them except whatever licensed usufructs are conceded from time to time through the notifications and orders of the Forest Department or the Forest Ministry. The only such concession in practice has been a limited extent of jhum or swidden cultivation. This too is sparingly granted, and in most instances farmers indulge in this age-old practice as surreptitiously as they can, which is no easy feat given that jhum cultivation involves clearing jungle and setting fire to the cut and dried vegetation. The government has not seen fit to recognise any rights of RF residents through formal grants (including leasehold rights) such as were granted to Khasi villagers in Sylhet division in accordance with Section 28 of the Forest Act of 1927. The latter practice, too, was discontinued 'during the rule of President Ershad' in the 1980s.¹¹

¹¹ Interview with Khasi village headman in Maulvibazar district, Sylhet, June 2001



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Reinghyong Reserved Forest

six

conflicts over land

The last two centuries saw three major events that adversely affected the land rights of the people of the CHT. The first of these occurred in the 1870s with the declaration of former swidden and forest commons as RF. The next was the construction of a hydroelectric dam at Kaptai in 1960 that submerged the town of Rangamati and displaced almost 100,000 people, i.e., about one-third of the population of the region, and permanently inundated 54,000 acres of the choicest paddy lands (Ishaq 1975, p 126). Between 10,000 and 40,000 un-rehabilitated Chakmas permanently migrated to India, and remain in the north-eastern state of Arunachal Pradesh as stateless refugees (Bhaumik et al. 1997, pp 140-149). Compensation payments and alternative grants of lands were grossly inadequate, and many believe that the political unrest of the 1970s was at least partly a result of dissatisfaction with the havoc caused by the dam. (Sopher 1964; Chakma 1995). The last event was the population transfer programme of the 1980s that displaced about the same number of people (Roy 1998). The population transfer programme, however, involved violent incidents. A discussion of the human rights dimensions of these changes is outside the scope of this paper.¹² However, it should be noted that the aforesaid processes led to violent disruptions in the social and cultural integrity of the indigenous peoples. Tens of thousands of indigenous people were evicted from their homes and lands, and many of these areas are now occupied by Bengali settlers. The original inhabitants of these areas are now internally displaced within the CHT, especially in remoter forest and hill areas, including in the reserved forests. These displaced people are not only eking out a sub-human existence in their makeshift settlements, but causing huge pressure on existing natural resources, including common swidden lands, natural forests, and plantations raised by the Forest Department. This is leading to much tension between the earlier inhabitants of such areas and the internally displaced people. Moreover, the tension between these displaced people and the settlers is still strongly felt, and this has severe implications for long-term peace and stability in the region. The combined effects of land dispossession, land scarcity, sudden dependence on the market, and rising deforestation caused untold hardships to different communities, and especially for women. Women not only play a leading role in resource management, but carry the main responsibility for fetching firewood and water. With decreased access to land and forest, women had to go farther and farther to fetch these necessities (Roy 2000c, p 108). The situation has not improved in recent years, although state-sponsored in-migration has since been halted.

¹² The nature of these conflicts has been documented in Roy 2000e. See also, CHT Commission, 1990.

Two other likely developments may have a negative impact on the local people in the near future. One of these is the expansion of the area designated as RF, and the other is mining activities for natural gas and oil. The actual and likely impact of these developments on the land rights of the people concerned is discussed below. It may be noted that the Kaptai Dam affected both indigenous people and ethnic Bengali residents. Similarly, the creation of the new reserves will also affect a significant number of long-time, Bengali-speaking CHT residents, especially evacuees of the Kaptai Dam. However, in both cases, the vast majority of the affected people will be indigenous peoples.

The Old Reserved Forests

It is not only the non-recognition of land rights which undermines the rights and needs of inhabitants of the RFs. In other ways too they are deprived of their rights and needs as ordinary citizens. The health situation within the RFs and the lack of any access to education and other extension services that are taken for granted in other areas is a further cause for concern (Roy and Gain 1999). There are no government-run or state-subsidised schools within these areas, because in order for the government to take over the administration of a school or to provide subsidies the school premises need to be recorded in the name of the school, which the BFD has refused to allow. Inhabitants of RFs may elect their representatives to local government bodies, but the limited funds allocated to the local councils are seldom enough to make any serious impact on the development and welfare needs of the community. On the other hand, the absence of tenured security precludes the RF residents from taking up long-term cultivation, plantation, and commercial ventures based on land use.

The BFD appoints a number of 'headmen' in selected hamlets. Originally, these headmen were nominated by the people themselves and their appointments were formalised by the BFD. The BFD has tried to manipulate the system of appointment to its own advantage, but it is not easy nowadays to have a headman appointed without the consent of the people concerned, as RF inhabitants are more politically conscious about their rights.¹³ Although the headmen act as spokespersons for their people and liaise with the BFD, they are not part of either the traditional structure of the mauza headmen and karbaries or of the modern elective council (the Khasi village headmen known as 'Myntri' may be considered an exception). These BFD-appointed headmen are therefore seldom in a position to be able to defend the rights of the people in an effective manner, as the basis of their office is dependent upon the goodwill of the FDOs.

Formally, the RFs are 'owned' by the Forest Department, but the inhabitants of this land and the surrounding areas, who are almost exclusively indigenous people, have seldom acknowledged this. To people not traditionally used to a concept of private ownership of land it has meant little, especially since they know that their ancestors cultivated the land long before the arrival of the foresters. This may at least partly explain why indigenous people have felt free to migrate in and out of these areas at will. On two occasions in history, military intervention was sought to contain migration into the forests. The first time was at the beginning of the 20th century in the

¹³ This information was provided to the writer by inhabitants of RFs in Sylhet and the CHT in June 2001.

then Maini RF, when British soldiers were almost brought in to evict the so-called encroachers. This was averted through the intervention of the Chakma Chief, and eventually the area – which contains vast areas of lowlands suitable for plough agriculture – was de-reserved. It now forms part of Dighinala sub-district of Khagrachari district within the Chakma Chief's administrative circle. In 1971, paramilitary troops of the East Pakistan Rifles (EPR) were actually brought into the Reingkyong RF to evict new migrants. Bloodshed, however, was averted when local leaders mounted vocal protests.¹⁴ Since then, organised military force has not been used to protect the RFs, but BFD guards have been known on occasion to resort to armed action (Roy and Gain 1999, p22). It is clear that indigenous communities and the Forest Department have conflicting views over the rights to these areas, as will be discussed in more detail below.

Although the number of settlements in the RFs was negligible during the British period (1860-1947), they started to increase with the general growth of the CHT population. The population of the Reingkyong reserve grew because of migration by unrehabilitated evacuees from the Kaptai Dam reservoir area in the 1960s (Webb and Roberts 1976). A large number of indigenous people displaced by the recent internal conflict have also taken shelter in the Kassalong reserve. Similarly, the southern Matamuhri and Sangu reserves have also taken their share of overflow from the other areas, which themselves are now over-populated due to the influx of ethnic Bengali transmigrants from the plains. Recently, the Forest Department sought the cooperation of local leaders to stop swidden cultivation entirely in the RFs. The leaders, however, are known to have advised the department to overlook the matter on humanitarian grounds.¹⁵ In the meantime, swiddeners in the northern Kassalong RF feared arrest and criminal prosecution since a list of cultivators had reportedly been handed over by the Bangladesh Army to the Forest Department.¹⁶

Technically, the Forest Act forbids most forms of land use within an RF unless specifically allowed by FDOs. The best example is the raising of tree plantations through the 'taungya' method that necessarily involves swidden or jhum cultivation. However, jhum cultivation not involving taungya could, and did, lead to prosecutions in many cases, depending upon the discretion of the FDO concerned. Similarly, criminal prosecutions were also initiated in places where there were large-scale incidents of theft and illegal logging from the RFs. That does not, mean, however, that the actual offenders were being prosecuted. It merely suggests that prosecutions took place, and in the vast majority of cases, it was the innocent inhabitants of adjacent areas who were prosecuted by having their names picked at random from electoral registers.¹⁷ This has become the customary practice as it seems to be the only way in which FDOs can demonstrate the efficacy of their forest protection efforts (Roy and

¹⁴ The leaders included the Chakma Chief, Raja Tridiv Roy and Manobendra Narayan Larma, who were elected to the national and provincial legislatures respectively. Roy went into exile in 1971 and took office in the Government of Pakistan. Larma later led the armed struggle for autonomy until he died in an intra-party conflict in 1985.

¹⁵ Meeting of Forest Department officials, the district administration, the local MP, and other local leaders in May 2001 at which the author was present.

¹⁶ This information was provided to the author by a leader of the Tribal Tree Planter's Association based in Rangamati, June 2001.

¹⁷ *Taungya Newsletter*, November 1998, No. 1, Issue 1.



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Usui (Tripura) villagers in the Reingkyong Reserved Forest

Gain 1999, p22). Sometimes, six or seven different cases are filed against a single person, who is obliged to attend each and every hearing. In desperation, many of the accused have stopped attending hearings, as they cannot afford the cost of travel to the district headquarters and the legal fees. Now many are fugitives from justice, on the lookout for police and forest officials on market day, lest they be arrested and imprisoned. It is not surprising, therefore, that the inhabitants of many RFs seek to have these areas 'de-reserved', a demand strongly opposed by forest administrators. This also explains why CHT people are so vehemently opposed to the expansion of the RF areas.

The New Reserves

Given the above scenario, one might have expected the government to revise its forest management policy for the CHT. In fact, after surveying the situation in 1976, some expatriate forestry experts (Webb and Roberts 1976) expressly recommended that the smaller RFs be de-reserved and handed over for settlement and permanent cultivation. That, however, was not to be. Contrary to popular expectation and the aforesaid recommendations, the government chose to follow the advice of its senior foresters by initiating the creation of hundreds of small, new RFs all over the CHT. This was heralded by a series of gazetted notifications from the MOEF, most of which were published in 1992. The total area involved is approximately 89,034 ha. About half of this has already been declared to be RF through notifications issued in June 1996 and in April and May of 1998. Although this process has the seemingly laudable aim of enhancing the region's forest cover, it also has severe implications in terms of the basic land rights and other human rights of the people living there. The land affected includes small farmers' registered holdings, homesteads, farm land in the process of being registered, and forest and grazing commons held in accordance

with customary law. Ironically, the land to be made into RF covers almost the whole area in which swidden cultivators were rehabilitated by the Forest Department's Jhum Control Division in the 1960s in order to raise fruit orchards, the title to which was due to be transferred to the planters (Ishaq 1975, p99; Sattar 1995, pp10-12). When the project failed, in the opinion of many as a result of the Forest Department's inefficient management, the government unilaterally raised pulpwood plantations and re-categorised the land as PF.

The ownership of PF land is vested in the district collectorate under the deputy commissioners, but unlike RFs, people may enter the PF without the Forest Department's permission although some species of trees are protected under sanction of imprisonment. PFs are generally regarded by foresters as an intermediate category of forest awaiting up-gradation to RF, when their total administration and ownership becomes vested in the Forest Department. Thus, while virtually no form of resource use is permitted within RFs without the express consent of the Forest Department, any manner of resource use is permitted within PFs, unless expressly prohibited. In the CHT, there is a moratorium on many species of trees within PFs, and violators are liable to criminal prosecution. A large part of these PFs has already been formally re-categorised as RF, although the actual demarcation of this land by the district collectorates has reportedly not yet concluded.

A delegation of hill leaders met the Minister for Environment and Forests in August 1998 and demanded that the notification on the creation of new RFs be revoked. Since then, a committee has been formed with members from all three districts to peacefully resist the reservation process. The Committee for the Protection of Forest and Land Rights in the CHT declared in 1998 that it would start an agitation movement if the concerned notifications were not revoked. Subsequently, the minister promised to revoke the order, but reports indicate that the process to gazette and register the order is proceeding and FDOs are preparing to start plantation programmes in these areas (Roy 2000e, p 179). Another delegation of hill leaders met the new minister in autumn 2001 and received assurances that the problem would be redressed, but nothing of substance has been done so far (June 2002) to allay the fears of the people in the affected areas.¹⁸ The uncertainty continues.

Displacement and Dispossession by the 1980s Population Transfer Programme

In 1979, the Government of Bangladesh initiated a new measure to combat the rising insurgency in the region through a population transfer programme. An estimated 200,000 to 450,000 Bengali-speaking people from various parts of Bangladesh were re-settled within the three hill districts.¹⁹ The relevant land law, Rule 34(1) of the CHT Regulations, was amended to facilitate land grants to non-residents, among other things. This process continued for three to four years. In conjunction with anti-insurgency military operations, the resettlement process led directly or indirectly to the dislocation of tens of thousands of indigenous people. Some took refuge across the international border in India and others fled to the remoter hill and forest areas. The international refugees have since returned to the country, but according to

¹⁸ The writer was a member of this delegation.

¹⁹ Estimates of the number of settlers vary a great deal. The lower number is cited as "more than 200,000" in Chakma (1993) A higher number is cited in the Preface of Chittagong Hill Tracts Commission, (2000)



Usui (Tripura) woman and child

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refugee leaders, a significant number of them have not been rehabilitated in their original homesteads (Roy 2000e, p 174). Similarly, tens of thousands of internally displaced people (IDPs) still continue to survive in make-shift settlements, including those in the northern Kassalong RF (Roy 2000e, p 177), where many suffer from malnutrition and disease of near-epidemic proportions. Two specific measures of the 1997 Accord have direct relevance for the IDPs. One of these is the task force that has been established by the government to rehabilitate the IDPs and the international refugees. The other measure is a commission on land which is expected to provide expeditious remedies for land dispossession and other cases of land disputes.

The task force was originally headed by the then MP from Rangamati district. A list of displaced people was compiled, but little has been done to either rehabilitate them or to look after their livelihood, health, and education needs. Disputes over whether ethnic Bengali settlers fall within the definition of IDPs as laid down by the Accord has further complicated the matter (Roy 2000e, p 176). The newly elected BNP-headed government has not appointed a new head of the task force, and it is not known what it intends to do about the matter. The formation of a Commission on Land has also been declared to resolve land-related disputes in accordance with “local laws, usages and practices,” but as of June 2002, it has yet to begin to function. A law was passed in 2001 by the previous Awami League government to establish the commission and give it the requisite powers, but it was rejected by the CHT Regional Council because the law vested unfettered powers in the chairman, whose decision would be final if the other members could not forge a consensus.²⁰ When it was in opposition, the BNP declared that the 1997 Accord had made too many concessions to the hill people. Its stand on the Accord has reportedly mellowed a

²⁰ Interviews with J. B. Larma, Chairman, CHT Regional Council, 2000 and 2001

great deal, but its exact attitude regarding the various major issues, including land, has not been made public. This is causing much uncertainty among the affected people.

Industrial Leases

Another development of recent times that has led to the displacement of indigenous people is the granting of long-term leases of land to influential non-resident individuals and companies based in cities outside the CHT for commercial and industrial ventures. Most of these leases were granted in Bandarban district and, to a lesser extent, in Khagrachari and Rangamati districts, particularly in the 1980s. The land in question was hitherto used as swidden and forest commons by indigenous people. Some of them still occupy the land, since those leasing the land have never bothered to visit, while others have been pressured to vacate their land or to stay away. Although much of the land has been mortgaged to financial institutions to raise loans, very little has actually been used for raising plantations or for other ventures as agreed upon in the lease deed. The problem remains unresolved.

Mining for Gas and Oil

In the 1980s, the first seismic survey of the CHT was conducted by Shell but was discontinued due to the insurgency in the region. Surveys were resumed in the 1990s by the US-registered company United Meridien Ltd., which was later merged with another US company called UNOCAL. Under general Bangladeshi law, sub-soil rights are reserved for the state alone, although the Hill District (Local Government) Council Acts of 1989 (as amended) state that the concerned HDC is entitled to a share of royalties from mineral extraction. There seems to be no other understanding beyond this, either with the government, or with the mining company.

It has been said that UNOCAL's interests in the CHT have recently been bought by a Saudi Arabian sheikh who intends to start drilling for gas in the near future. It seems, however, that no understanding has been reached with the CHT leaders regarding revenue sharing or with regard to the mode of extraction; the likely impact on inhabitants of drilling sites and gas-line areas; the question of dislocation, rehabilitation, compensation; and so forth. The section of the CHT population that will be most vulnerable to any negative impacts resulting from the drilling process is likely to be the swidden (jhum) cultivators. Since swidden cultivators are not usually in possession of registered title deeds to their jhum land, they may well not receive any monetary compensation for damage. Secondly, since natural gas (and oil) is a highly combustible matter, swidden cultivation may well be banned or severely restricted, as the manner of cultivation involves setting fire to dried vegetation. The risk of permanent eviction from drilling and pipeline sites cannot be ruled out. The impact of mining on the local environment is another important matter that may adversely affect local people. If these matters are not negotiated in an equitable manner, mining could lead to further dislocation and unrest and undo whatever positive gains have been achieved by the 1997 Accord. Given the non-transparent manner in which many mining companies operate, and the unsympathetic attitude of most governments, it will be a daunting task for the CHT people and their councils to negotiate effectively with either the government or the mining company.

Mining by foreign companies is still a controversial issue at the national level, because of both cost factors and the more important issue of how far these resources ought to be retained for local consumption. Recent newspaper reports suggest that the new government is thinking about keeping the matter in abeyance in view of public opinion on the matter.²¹ This may actually be a positive development for the CHT as it allows the people of the region time to prepare for negotiations to avoid human rights violations and possible environmental damage.



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Degraded hill forest

²¹ The *Daily Star*, Dhaka, 9, 10, 11 February 2002.

seven resolving the conflicts: within and beyond the CHT accord of 1997

Cancellation of Non-Residents' Leases

Of the land related problems identified above, some have been directly addressed by the CHT Accord, some have been indirectly referred to, while others have not been tackled at all. The Accord states that any lease of land that has not been utilised for more than ten years will be cancelled. It is reported that the newly created Ministry of CHT Affairs has instructed the collectorate officials – the deputy commissioners – to cancel these leases, but it seems that nothing of substance has yet been done. Since land is a matter for the Ministry of Land, and not the Ministry of CHT Affairs, the orders will perhaps have to come from the former. It should be mentioned that where land has remained unutilised – even for less than ten years – in violation of the conditions of the lease, the lease may still be cancelled. This may call for a decision at the cabinet level, which is itself an uncertain prospect, given the so-far silent attitude of the new government on crucial aspects of the CHT Accord, including land-related issues.

The dispossession of land through the population transfer programme has not been directly addressed in the Accord. Members of the indigenous people's party, the JSS, have claimed that the Government of Bangladesh had verbally agreed to resettle the Bengali settlers outside the CHT, a claim denied vehemently by the previous Awami League government.²² In any case, we may assume that the matter has been addressed indirectly through the provision by the land commission, and partly by the provision on the grant of lands to landless 'tribal' people. However, to what extent justice can, or will, be provided through the commission and the land grants will depend upon various factors, such as those outlined below.

Adjudication by the Land Commission

The land commission is headed by a retired judge of the High Court and includes the Commissioner of the Chittagong Division, a civil servant, the three chiefs, the three district council chairpersons, and the chairperson of the CHT Regional Council. The secretary of the commission has also been named, a CHT hillman, seconded from the judicial service. The commission, however, has yet to start its work. The 1997

²² The present BNP government is even more unlikely to agree to having the settlers rehabilitated outside the CHT since the settlers themselves voted overwhelmingly for the BNP, and it was a previous BNP government that officially sponsored the transmigration programme.

Accord states that no appeals will lie against the decisions of the commission and that the commission will be obliged to take into account the “laws, customs and practices prevailing in the CHT.”²³ However, the exact process of adjudication – including the detailed terms of reference – is to be determined by the commission itself, when it finally meets.

Quite apart from the question of how much authority should be wielded by the chairperson of the commission, the exact nature of the justice meted out to litigants will depend upon various factors. These include the process of inquiry, the relative weight provided to custom-based rights vis-à-vis rights based upon written title, the burden of proof, and so forth. Among the most difficult issues before the commission will be disputes involving Bengali settlers in possession of title deeds and indigenous people claiming rights based on customary rights, or rights that fall short of full ownership. Among other related questions that will have to be dealt with are: (i) the priority to be provided to antecedence in time for ownership or possession; (ii) the conflict between customary rights and written title; (iii) the burden of proof (will there be any presumptions of law or fact?); (iv) the question of whether the settlement grants in the period concerned were legally valid in the first place, without considering customary rights; and so on. A basic reading of the law governing settlements and leases – Rule 34 of the CHT Regulations – suggests that the government was only authorised to make leasehold grants to non-residents for ‘commercial’ or ‘industrial’ purposes and freehold grants in the case of ‘residential’ purposes.²⁴ However, during the transmigration programme of the 1980s, the government made freehold grants to the settlers, mostly for agricultural purposes. Therefore, it remains to be seen how the matter is eventually addressed by the commission. The fact that the majority of its members are of an indigenous background might suggest that customary law will be given high priority, but this will depend upon the terms of reference, including the relative weight of the chairperson’s opinion in the absence of consensus among the other members, and also on the political backgrounds and other biases of the members, irrespective of their ethnicity.

Optimum, equitable, and sustainable use of land in the CHT will not be possible if the major land-related disputes remain unresolved. Therefore, these need to be resolved, or at least reasonably addressed, to ensure both justice as well as unhindered and peaceful access to, and use of, land and forests by those living within and around them. The land commission may well provide remedies for the numerous cases that come before it, but it is suggested that a purely legalistic approach may leave one or other of the parties concerned in a land dispute hugely dissatisfied. This would have undesirable implications with disputes pitting indigenous people against Bengali settlers. Therefore it is incumbent upon the government to make a detailed plan to rehabilitate those whose claims are denied by the commission but whose situation merits humanitarian intervention based on equity and justice.

Forests

Unlike the other matters mentioned above, the disputes regarding the forest areas may be considered a grey area in the Accord, which remains entirely silent on the

²³ Clauses 5 and 6, Part D, CHT Accord 1997

²⁴ For a detailed discussion of the legality/illegality of the settlement process, see Roy 1997b.

administration of the RFs. The only provisions of the Accord that indirectly address the RF areas are the clauses regarding the royalties on forest produce and mineral extraction to be shared by the government with the HDCs. This, however, is unlikely to be accepted by the MOEF, as the ownership and administration of the RFs is vested solely in this ministry. Regarding the creation of new RFs, it has been argued by the Committee for the Protection of Forest and Land Rights in the CHT that the process violates the 1997 Accord as well as the Local Government Council Acts of 1989, both of which formally represent the supreme authority on land administration to the HDCs.²⁵ On one occasion, a writ petition was filed in the High Court challenging the reservation process, but the High Court advised the petitioner to first exhaust his remedies by applying to the CHT Regional Council. This matter is still pending. It is also possible that because the matter concerns a land dispute it may be taken before the land commission. This would delay matters even further, and thereby deny the affected people justice.

The conflicts in the old reserved forests, which have not been directly addressed by the 1997 Accord, may drag on for many more years unless the government revises its current policies on forest management. Given current trends, this does not seem imminent, especially considering the recent amendment to the forest laws through the Forest (Amendment) Act of 2000, which suggests that the government wishes to continue with its regulatory and policing approach towards forest management. The introduction of measures to regulate land use on land adjacent to forests, and the strengthening of the quasi-police powers of FDOs, leave little room to doubt that custom-based land rights are still far from being tolerated, let alone respected (Roy and Halim 2001a). The 2000 Act does formally introduce the concept of social forestry, and this could have opened a window of opportunity to promote a participatory approach to forest management, but this aim seems to have been subverted by measures that suggest that the so-called social forestry programmes actually seek to raise commercial plantations under the control of the Forest Department. Critics of the draft Social Forestry Rules – including forest dwellers, organisations of indigenous peoples, environmentalists, and NGOs – suggest that the ‘social’ and ‘forestry’ elements of the prescribed model are of little value. They have demanded that the draft rules be amended to be more respectful towards the rights of participants in the social forestry projects (Roy and Halim 2001). It remains to be seen how the matter will be addressed. The revised draft rules have reportedly been sent to the ADB (Bangladesh’s major partner in forestry) for its comments, before being finalised.

In order to check or at least minimise the level of deforestation in the government-managed forests, a concerted effort to both control corruption and theft, and include the local communities in the management and control of the forests is needed. The latter might actually be far easier to implement if the government were to take bold steps to revise its old-fashioned, state-centric forest management policies. Indigenous people, NGOs, and environmentalists from different parts of the country have demanded legal and policy changes not only to bring about the joint management of forests between the Forest Department and local communities, but to actually offer

²⁵ An undated leaflet circulated by this committee claims that the reservation process also violates the CHT Regulation, 1900 and the Forest Act of 1927.

local communities a direct share in the benefits from forestry.²⁶ If this is not done, the remaining government-managed forests and plantations are almost certain to be denuded within a decade or less. Indigenous people in the CHT have demonstrated their skills in forest management and in tree and bamboo farming. It is only logical that these experiences and the traditional knowledge systems and innovations be utilised for the benefit of all, with the prior informed consent of the community concerned, in accordance with Agenda 21 and the Convention on Biological Diversity.

Future Land Administration under the Hill District Councils

The 1997 Accord prescribes three major changes to the land administration system in the hill districts. To begin with, no grant, settlement, transfer or acquisition of land in the CHT is to take place without the consent of the concerned HDC. Secondly, land administration is to be added to the HDCs' list of transferred subjects. In addition to this, HDCs are to concurrently share authority over the headmen (and other revenue officials) along with the circle chiefs and DCs. As of June 2002, these powers have not been transferred to the HDCs. The CHT Regional Council – led by the indigenous people's party, the JSS – has complained bitterly of delays in the process of transfer of powers to the HDCs and the CHT Regional Council.²⁷ One of the most important priorities for the local people is to be able to obtain titles to land through a process that is quick, easy, and cost-free. However, the mere transfer of authority from plainsmen bureaucrats to indigenous councillors cannot by itself guarantee justice to the CHT people. Thoughtful reforms are needed that can at least partly address the problems of corruption and circuitous official procedures that have bred corruption, and have been the bane of landless people all over the country.²⁸ Previously, non-residents could not acquire land in the CHT at all, while each local farming family could obtain freehold grants of up to 25 acres (10.2 ha) of land. This was curtailed to 5 to 10 acres (2.5-4.5 ha) through a legal amendment in 1971, which also provided that non-resident industrialists could obtain leases of land up to 100 acres (40.5 ha) or more. This trend needs to be reversed through legal amendments.

Privatisation

The cessation of organised hostilities in the CHT has hastened the pace of marketisation and privatisation in the region. Consequently, more and more hitherto swidden and forest commons are being converted into homesteads and family-owned orchards and plantations. This means that those who, for whatever reason, cannot obtain a private plot are now deprived of the use of the former commons as well as having no access to a plot of their own. Similarly, some areas of the Karnaphuli reservoir near Rangamati have been leased out to non-resident entrepreneurs, causing conflict with local people who used the area for fishing and for navigating their canoes and boats to and from the market. This is also a trend that could adversely affect the resource rights of the relatively poor.

²⁶ These were among the unanimous demands contained in the *Rangamati Declaration* dated 19 December 1998 and the *Dhaka Forests Declaration* adopted on 9 June 2001. The latter was adopted at a Workshop on Forest Management and Land Rights organised in Dhaka by the Committee for the Protection of Forest and Land Rights in the CHT, SEHD, and Taungya

²⁷ This has been a constant complaint of Jyotirindra Bodhipriyo Larma, the present chairman of the CHT Regional Council and leader of the indigenous people's party, the JSS (which led the armed movement for autonomy in the CHT from 1972 to 1997).

²⁸ For a detailed discussion of the CHT administrative system see Roy 2000b.



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Indigenous fishermen in the Karnaphuli reservoir (Kaptai Lake)

Just as important is the fact that privately registered farm land is also being sold more frequently. On one hand this is helping local farmers liquidate their assets and raise the so-far elusive capital for their farming and other ventures. The other side of the coin, however, shows economically poor farmers being induced to sell their land at prices dictated by the few cash buyers. The buyers are usually the more affluent city cousins of the sellers. Furthermore, communities living in the more inaccessible uplands and highlands do not share the same motivation for becoming registered owners of their land, which as yet has little market value. People in these more remote areas live largely off swidden farming, hunting, and gathering and have little reason to fear dispossession. They are therefore reluctant to brave the rigours of city offices and pay bribes to officials to obtain registration documents. Prevailing social and cultural conditions, and the hidden costs of illegal rent-seeking, may also delay the process further. In the long run, these people's tenure is rather precarious. Unless affirmative action is taken to safeguard the interests of these remote communities and other disadvantaged sections of the rural population, the rising inequities could spell further unrest and hinder development needs. A combination of measures for easy granting of land titles (such as are in place in Bolivia²⁹) and preventing the privatisation of selected swidden, grazing, and fishing commons could at least partially address the problems of the landless people.

²⁹ In Bolivia, the Government of Denmark is financing a project on land titling for indigenous people. Both Bolivia and Denmark have ratified the International Labour Organization's (ILO) Convention No. 169 on Indigenous and Tribal Peoples, which contains provisions for the protection of indigenous (and tribal) peoples' individual and collective land rights.



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Usui (Tripura) woman and child

eight conclusion

In the aftermath of the Peace Accord of 1997, a number of major developments on forest and land issues seem more than likely. The rulings of the land commission may be unable to adequately resolve the multi-dimensional problem of land possession (and dispossession) from a humanitarian perspective. The acceleration of the land privatisation process in the CHT, which may exclude the relatively disadvantaged section of CHT residents, is certain to continue at an even faster pace. The rate of deforestation in the forest areas is also likely to continue as before. These developments would surely hamper the post-Accord process of rehabilitation and development, and deepen the ecological crisis that has been accelerated by the Kaptai Dam, endemic deforestation, and the unsuitable plantation and cultivation patterns of recent years. More importantly, they may well fuel further political unrest – and worse.

In the circumstances, many people – including human rights workers, development planners, and economists – consider that it would be useful to have a comprehensive policy regarding the land and other natural resources of the region to ensure equitable and environmentally sound resource use practices. However, having a policy without proper implementation strategies would be useless. Any new policy that is framed would need to carry the people with it, including farmers, traders, community leaders, and government officials. For any such reforms to work, the importance of traditional indigenous resource management systems and innovations needs to be acknowledged and maintained insofar as they are appropriate to the socio-economic and cultural needs of CHT society today. Above all, such a policy should be fair on the basis of ethnicity and class, and be non-discriminatory towards women. This calls for intense lobbying with government leaders, and lending and donor agencies, and strong arguments that clearly demonstrate that such a strategy will benefit both the CHT people and greater Bangladeshi society at large.

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About the Author

Born in 1959, Raja Devasish Roy grew up and went to school and college in Chittagong and Rangamati. He obtained a Bachelor's degree in Law from the University of Kent, in the UK, was made Barrister-at-Law at the Inns of Court School of Law, London, and received a Diploma in Legal Studies from La Trobe University, Victoria, Australia.

Raja Devasish Roy has been acting as a 'Circle Chief' or raja within the partially autonomous self-government system in the Chittagong Hill Tracts (CHT) since 1977. The position involves land, revenue, and 'tribal' justice administration within the Chakma Circle (most of Rangamati and part of Khagrachari districts). As chief, he is also ex-officio adviser to the Deputy Commissioners & Hill District Councils of Rangamati and Khagrachari, the CHT Development Board, and the Ministry of CHT Affairs, and will act as a member of the CHT Land Commission (ex-officio) when it starts work.

Raja Roy is a practising lawyer, and has been at the Dhaka District Court since 1988 and the High Court since 1991. He has been actively involved in international processes related to the environment, development, and human rights, during which he has attended regular meetings of several UN bodies. He is a strong advocate of indigenous peoples' rights within Bangladesh and in several international processes. Currently, he is the Convenor of the National Adivasi Coordination Committee, chairperson of the Hill Tracts NGO Forum, and chairperson of Taungya, all voluntary organisations based in Rangamati. He has published several articles on land rights, indigenous peoples, culture, and environmental issues in journals within Bangladesh and abroad.