



**LAND RIGHTS OF THE INDIGENOUS
PEOPLES OF THE CHITTAGONG
HILL TRACTS, BANGLADESH**



Rajkumari Chandra Roy

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The author is an indigenous lawyer (LL.B, LL.M) from the Chittagong Hill Tracts.

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**INTERNATIONAL WORK
GROUP FOR INDIGENOUS AFFAIRS**

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07

E-mail: iwgia@iwgia.org - www.iwgia.org

*To all the indigenous peoples
from the Chittagong Hill Tracts,
including my parents,
who have lost their ancestral lands*

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Rajkumari Chandra Kalindi Roy
November 1999

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PREFACE

PREFACE

The denial of the rights of indigenous peoples to exist as a separate and distinct people with their own traditions, cultures and practices is seriously undermining many a fragile democracy in the third world, home to most of the world's indigenous peoples. The increasing number of armed conflicts in indigenous areas emphasizes the urgent need to address the needs and concerns of indigenous peoples in a broader spirit of understanding, and with greater comprehension for their hopes and aspirations. Indigenous peoples are among the most marginalized and poverty stricken communities, and most conflicts in indigenous areas develop from socio-economic problems. The uprising in Chiapas, Mexico is but one such example.

In today's world of geo-political dynamics, most states are multi-ethnic in composition. Along with other components of the national society, it is essential that indigenous peoples are not marginalized from national policies and programmes. They have the inalienable right to participate in all such processes, particularly as the recipients of derived benefits, and not exclusively as those who bear the costs, which has been the practice so far.

Within any nation-building exercise, it is essential that the rights of the indigenous peoples living within that nation-state be recognized and accommodated, the only path able to foster a cohesive national identity. A denial of the rights of the indigenous peoples to decide and define the parameters of their own development - political, social, cultural and economic - will serve no other objective other than to impair the integrity of the nation-state.¹ Indigenous peoples too must have the right to determine their own future, on an equal basis with all other peoples.

Of fundamental importance is indigenous land and related resource rights. Most indigenous communities have land-based economies, and are mainly hunter-gatherers, small-scale agriculturalists and swidden farmers whose way of life, both in terms of their livelihood and within a cultural context, is linked to the land they traditionally occupy. Land is the source of their spiritual, cultural and social identity, in addition to being their principal resource base: "...for many indigenous peoples a given territory is considered their homeland, it is their physical, historical, and often mythical space with which the group identifies and

without which the group's very survival is at stake."²

Focus of the Report

Little is known about the Chittagong Hill Tracts of Bangladesh (CHT)³, an area of approximately 5,089 square miles (13,189 sq. kilometres) in south-eastern Bangladesh. It is inhabited by indigenous peoples,⁴ including the Bawm, Sak, Chakma, Khumi, Khyang, Marma, Mru, Lushai, Uchay (also called Mrung, Brong, Hill Tripura), Pankho, Tangchanga and Tripura (Tipra), numbering over half a million.⁵

Originally inhabited exclusively by indigenous peoples, the Hill Tracts has been impacted by national projects and programmes with dire consequences. The area is under the control of the military and there have been continuing reports of mass killings, rape, torture and forced detention by security forces, often in collusion with settlers inducted into the Hill Tracts by a government sponsored migration programme. International human rights organisations including Amnesty International, Survival International, Anti-Slavery International, and the International Work Group for Indigenous Affairs (IWGIA) have issued grim reports on the tense situation in the Hill Tracts. The conflict has also been brought to the attention of the UN Commission on Human Rights, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Indigenous Populations, and the International Labour Organisation.⁶

As a countermeasure to the violent situation in the CHT, an indigenous movement demanding self-determination was established in 1972. At the heart of the conflict is the forcible appropriation of indigenous land, and the lack of recognition and protection of the traditional land rights of the indigenous peoples. A low intensity conflict has been continuing in the area between the government's armed forces and the Parbatya Chattagram Jana Samhati Samiti - Chittagong Hill Tracts United Peoples' Party - for the past 24 years. As a result of the continuing violence, about 55,000 indigenous people from the Hill Tracts have fled across the border to India, and thousands have lost their lives.

In 1992, the Government and the JSS initiated another process of negotiations.⁷ Since the writing of this report, they have agreed to a Peace Accord on 2 December 1997 (for details see concluding section). Within the context of the peace negotiations, the question of land rights emerged as a major issue. As highlighted by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:

“These negotiations started in November 1992, and the unilateral cease-fire declared in August 1992 by the Shanti Bahini, the armed wing of the JSS, was turned into a mutual cease-fire agreement which was extended at each round of negotiations. By 5 May 1994, seven rounds of dialogue had taken place. The Special Rapporteur was informed, however, that one of the central problems remained to be resolved: the attribution of land in the Chittagong Hill Tracts now occupied by Bengali settlers but traditionally occupied and claimed by the Jumma people.”⁸

It is both urgent and timely that the issue of land rights be addressed in an open and comprehensive manner. The challenge facing the Government and the Jana Samhati Samiti, as the major participants in the peace process, is to find a just and durable solution to the CHT issue in order to prevent an escalation and a reversal to past armed hostilities.

Aim of the Report

This report aims to address the question of the land rights of the indigenous people of the Chittagong Hill Tracts. This is not the definitive study on land rights in the Chittagong Hill Tracts, nor is it exhaustive. It merely attempts to identify the major components of the issue and to suggest remedial recommendations towards a solution to the conflict situation:

1. *Short term:* The short term objective of this study is to provide an analytical framework of the legal basis for the traditional land rights of the indigenous people of the Hill Tracts;
2. *Medium term:* In the medium term analysis, this study aims to mobilise support at the local, national, regional and international levels to advance the achievement of a just and enduring solution to the land-related problems of the CHT. In this manner it aims to contribute towards finding a just and equitable solution to a problem which, if not resolved, is almost certain to erode the entire peace process.
3. *Long term:* As a long term goal it is hoped that this paper will provide the basis for an in-depth study on the customary laws, land rights and other aspects of the legal system in the Chittagong Hill Tracts, as well as contributing to the efforts to find a permanent and just solution to the conflict, which includes the recognition of the rights of the indigenous peoples.

Methodology

This report is based on information contained in articles, ethnographic studies, socio-economic surveys, historical data, reports, legal documents and other materials, as well as interviews with indigenous people, including their leaders. Another important source of information has been oral tradition, a rich store of indigenous knowledge in the CHT as well as in other indigenous areas that is often ignored or under-utilized.

This report has taken longer to complete than anticipated. This has been in order to provide an opportunity for consultation with, and to allow the participation of, the people concerned in each phase of the report. It has also enabled the inclusion of relevant recent developments.

The persons involved in this report have all been indigenous, including the consultants, researchers, resource persons and the lawyers, from its conceptualization, to seeking financial assistance, to the finalization of the drafting process. It has demonstrated the spirit of co-operation and solidarity which exists both among and for indigenous peoples at the local, national and international levels.

Format of the Report

The report is divided into several chapters. The first chapter gives a brief introduction to the Chittagong Hill Tracts, while Chapter II provides an insight into the area's historical background. Chapter III develops the legal framework for land rights. And Chapter IV details the major policies and programmes implemented in the CHT and their impact on indigenous land rights. Concrete examples of land dispossession are enumerated in Chapter V, while relevant international instruments are identified in Chapter VI. In conclusion Chapter VII recommends ways and means to advance a peaceful solution to the conflict in the Chittagong Hill Tracts, while Chapter VIII gives an update of the most recent developments.

CHAPTER 1

THE LAND AND THE PEOPLE

1. Introduction

The situation of the indigenous peoples of the Chittagong Hill Tracts is mirrored in many other indigenous areas around the world. They too strive to maintain their traditional way of life and to protect their distinct identity as a separate people, with their own languages, customs and traditions. Although there are some legislative and administrative measures specifically relating to the indigenous hill people of the Chittagong Hill Tracts, the Constitution of Bangladesh does not include any provisions to recognize the special status of the Hill Tracts and the rights of its indigenous peoples.

Geographical Location

The Chittagong Hill Tracts comprises the south-eastern region of Bangladesh. It shares international boundaries with the Indian states of Tripura to the north and Mizoram to the east, and Chin and Rakhain states of Myanmar (Burma) to the south-east and south. To the west lies the Chittagong district of Bangladesh, from whence originates the misnomer Chittagong Hill Tracts.⁹

The total surface area of the Chittagong Hill Tracts (CHT) is 5,089 sq. miles (13,189 sq. km.) including river and reserve forest areas, of which the total land area is 1,423 sq. miles (3,685 sq. km.).¹⁰ The CHT includes the present three Hill Districts of Rangamati, Khagrachari and Bandarban:

Rangamati	2,351 sq. miles (6,089 sq. km.)
Bandarban	1,738 sq. miles (4,502 sq. km.)
Khagrachari	1,000 sq. miles (2,590 sq. km.) ¹¹

“The land area of these districts are 452 sq. miles (1171 sq. km.); 516 sq. miles (1336 sq. km.) and 455 sq. miles (1178 sq. km.) respectively.”¹²

The Chittagong Hill Tracts is divided into four valleys formed by the rivers Feni, Karnaphuli, Matamuri and Sangu and their tributaries. The vegetation is lush and tropical with natural forests of evergreen and deciduous trees, bamboo and sungrass. The hill ranges rise to an

average height of about 2,000 ft. (600 metres) running in a north-east to south-westerly direction. The highest peaks in the Hill Tracts are the Keokradong (4,034 ft.) in Bandarban district, the Rakhmoin Tong (3,017 ft.) and Ploytai (2,857 ft.):

“The scenery throughout the Hill Tracts is very picturesque. The mixture of hill and valley, densely covered with forest and luxurious vegetation, yields the most beautiful and varied effects of light and shade. The rivers slowly meandering on their way to the sea, now shimmering like liquid gold, and again reflecting in heavy dark shadows every object within reach, all combine to make a picture not easily forgotten.”¹³

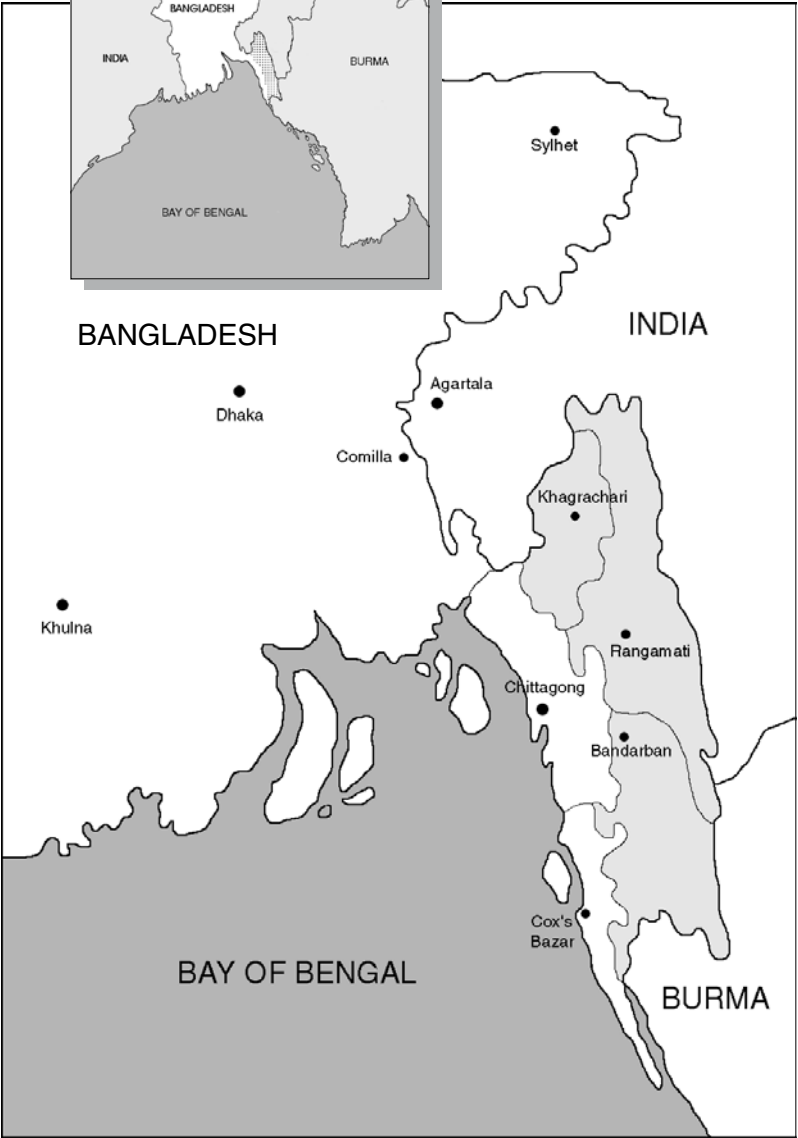
The Indigenous Peoples

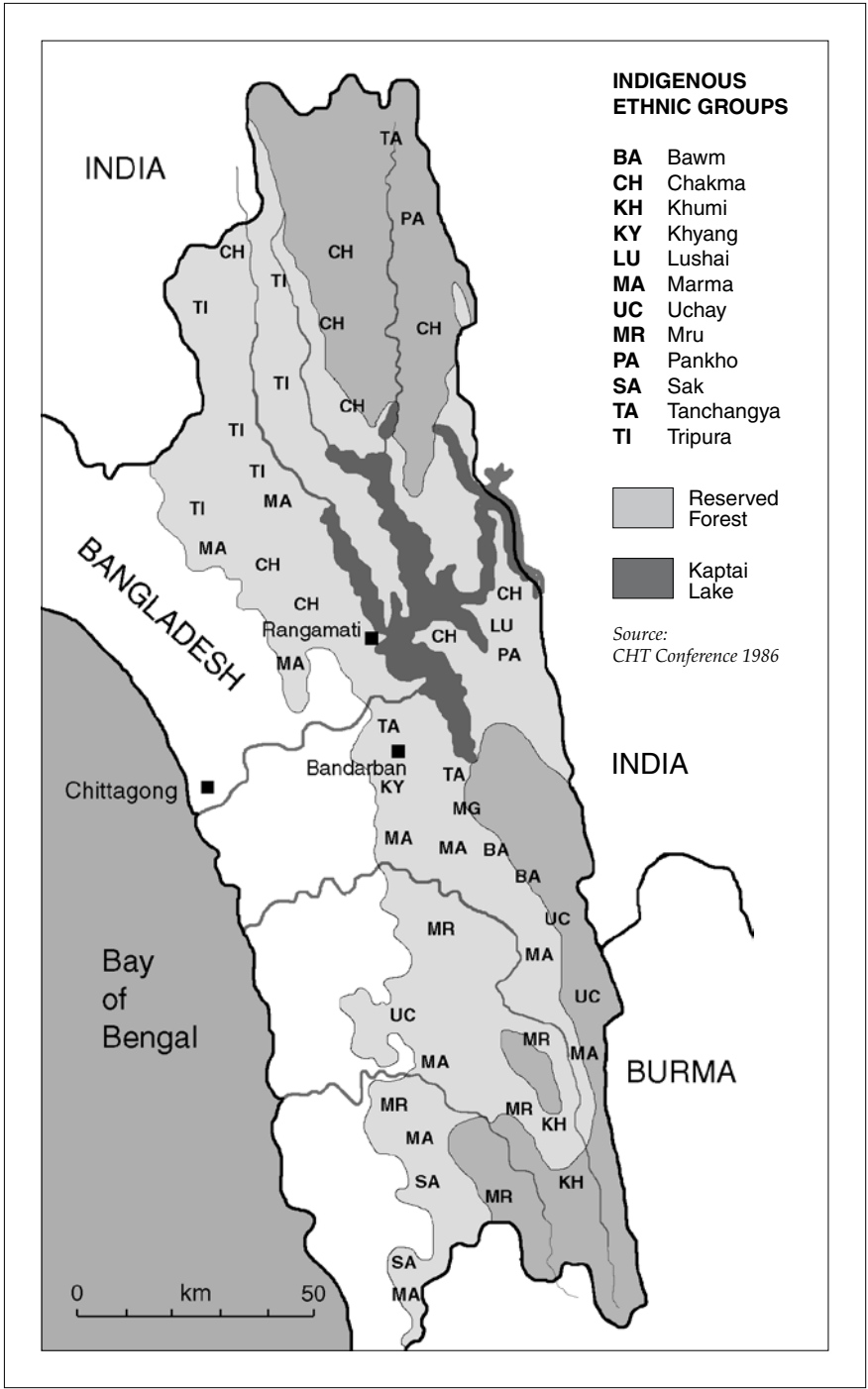
The Hill Tracts are home to the country's largest concentration of indigenous peoples namely the *Bawm*, *Sak*, *Chakma*, *Khumi*, *Khyang*, *Marma*, *Mru*, *Lushai*, *Uchay* (also called *Mrung*, *Brong*, *Hill Tripura*), *Pankho*, *Tanchangya* and *Tripura (Tipra)*¹⁴ Although the influences of national development have not had a uniform impact on the different peoples, they are bound together by a shared history, years of peaceful cohabitation, and a common future.¹⁵ There are approximately 600,000 indigenous people in the Hill Tracts although the figures given by the 1991 census are slightly less, indicating a negative population growth among the indigenous people.¹⁶

The indigenous hill people differ from the majority Bengali population of Bangladesh in their physical features, culture and religion. The indigenous peoples of the Chittagong Hill Tracts are mostly of Mongolian stock, belonging to the Tibeto-Burman language family extraction, and are closer in appearance and culture to their neighbours in north-eastern India, Burma and Thailand than to the majority Bengali population. The dominant religion of the indigenous peoples is Buddhism (*Chakmas*, *Marmas*, *Tanchangya*, and partially the *Mru*). Some of them belong to the Hindu (*Tripuras*) and Christian faiths (*Lushais*, *Pankho* and *Bawm* and some *Mru*), while others, have retained their traditional religion. However, nearly all the hill peoples also include traditional indigenous elements in their formal religious beliefs and practices.

The indigenous peoples have their own languages, both in written and oral forms, although many of the scripts, including that of the *Chakmas* is in danger of being lost entirely due to disuse. “Although the languages of the *Chakma* and the *Tanchangya* have close links with

THE CHITTAGONG HILL TRACTS





Bengali and Assamese, these languages have developed their own distinctive identity over the centuries. The languages spoken by most of the other indigenous peoples belong to what is known as the Tibeto-Burman family of languages.¹⁷ However, the Chakma script is closer to the Khmer script than to the Burmese. The medium of instruction in Bangladesh is the Bengali language, and there is no information available indicating any plans to include indigenous language instruction at educational institutions.¹⁸

The traditional indigenous houses are made from bamboo and sun grass, and are raised on stilts with a notched wooden ladder as a stairway. This began mainly as a safety precaution in earlier times when there were many wild animals wandering freely in the area including tigers, wild boars and elephants, as well as poisonous snakes. The clothes of the indigenous peoples are hand-woven, and are distinctive because of their vibrant colours. They are still worn on a daily basis by many of the indigenous peoples, especially on ceremonial occasions such as weddings, feasts and religious events.

Indigenous Identity

In view of the current debate around the term “indigenous”, it is expedient to indicate the legal basis for this terminology in referring to the peoples of the Chittagong Hill Tracts.

Indigenous peoples have been inhabiting the Chittagong Hill Tracts region since time immemorial. This has been documented by successive national administrations. For instance, the Chittagong Hill Tracts Regulation 1 of 1900, which is the principal legal instrument of the region, refers to “indigenous hillman” and “indigenous tribesman” interchangeably. Rule 4 of Regulation 1 of 1900 reiterates that “a Chakma, Mogh or member of any tribe [is] indigenous to the Hill Tracts.”¹⁹ In addition, the Schedule of the Regulation which lays down the laws applicable to the CHT and the extent of their application states that the Income Tax Act of 1922 “shall apply to all persons in the Chittagong Hill Tracts except the indigenous hillmen”.

Various correspondences²⁰ of the Governments of Pakistan and Bangladesh have referred to the hill people as “indigenous hillmen”.²¹ A law enacted by the Parliament of Bangladesh in 1995 identifies the hill people as being indigenous to the CHT: “.....any income of an individual, being an indigenous hillman of any of the hill districts of Rangamati, Bandarban and Khagrachari”.²²

However, at international fora, including the United Nations Working Group on Indigenous Populations, and during the current drafting process of the Declaration on the Rights of Indigenous Peoples, representatives of the Bangladesh Government have refused to recognize the hill people as being indigenous to the Hill Tracts. This is in contradiction to their earlier confirmation of there being indigenous people in the Hill Tracts as indicated in a study on indigenous populations by Mr. Martinez Cobo:

*“In Bangladesh, the Government states that the members of Tribal or Semi-tribal populations are regarded as indigenous “on account of **their descent from the populations** which are settled in specified geographical areas of the country”. (emphasis added).”²³*

The Cobo report provides the definitional criteria of ‘indigenous and tribal’:

“378. Indigenous populations may, therefore, be defined as follows for the purposes of international action that may be taken affecting their future existence:

379. Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

380. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

- a) Occupation of ancestral lands, or at least of part of them;*
- b) Common ancestry with the original occupants of these lands;*
- c) Culture in general, or specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style etc.);*
- d) Language (whether used as the only language, as mother-tongue,*

as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language):

e) Residence in certain parts of the country, or in certain regions of the world;

f) Other relevant factors.

381. On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group).

382. This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference."

Following these guidelines, among others, it is evident that the people of the CHT are indigenous to the Chittagong Hill Tracts area.

In this context it is pertinent to indicate that the concept of *self-identification* is gaining acceptance as an essential element of indigenous identity as emphasized by the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organisation:

Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. (Article 1 (2)).

The indigenous people of the CHT identify themselves as indigenous to their homeland and are perceived by others as indigenous or *adivasi* (original inhabitant). Therefore, there can be no question as to their claim to being indigenous to the CHT.

2. Socio-economic Perspective

The economy of the indigenous people is land-based. Traditionally, nearly all the hill people were engaged in subsistence swidden cultivation known locally as *jum* (also referred to as "slash and burn" or "shifting cultivation"). According to a 1901 estimate, out of a total CHT population of 124,762 persons, 109,360 existed entirely by *juming*.²⁴ Today, only some of them, in particular the Pankho and Khumi, remain pre-

dominantly dependent on subsistence *jum* agriculture.²⁵

In earlier times, the CHT was largely self-sufficient in food with imports from the plains markets limited to salt, dried fish, kerosene, iron, clay tools and utensils. Although the indigenous people were formerly swidden cultivators, the plough was introduced in the first quarter of the 19th century in the Hill Tracts. After the formal annexation of the CHT by the British in 1860, plough cultivation was encouraged as a two-pronged approach to increased revenue and simplified administration by concentrating the people in permanent - and hence more easily administrated - settlements. However, plough cultivation was restricted to the valleys mainly, while the hills continued to be cultivated using the *jum* method, which was the most sustainable system given the terrain:

“Although the transition was not easy, by the end of the last century the Government’s moves to encourage plough cultivation among the hillpeople were quite successful and almost all the available flat lands in the CHT were under the plough. Even so, because of the scarcity of such lands, the traditional *jum* cultivation remained indispensable and still played a vital role in the CHT economy. However, even with *jum* cultivation, there were constraints. This is because the same land may not be cultivated twice in succession without a fallow period for the soil to recuperate, which should be at least five years, and ideally, ten years or longer. Thus as early as 1918 when the CHT population was about 200,000 it was felt necessary to restrict the migration of plains people into the CHT to protect the economy of the region.”²⁶

The British deemed it expedient to elaborate legislative measures to protect the land and the economy of the CHT for three basic reasons: (i) to ensure it remained an indigenous area; (ii) to protect the indigenous people from the influences of rapacious entrepreneurs, and (iii) to prevent its transition to a market economy.²⁷

In the 1870s, the British administration initiated a process of declaring several areas all over the CHT as *Reserved Forests* with a total ban on *juming* within their confines. Within some of these areas, the Government cleared huge tracts of virgin forest to create teak plantations as raw material for commercial purposes.

In 1960, with the construction of the hydro-electric dam at Kaptai 100,000 people, of which 10,000 families were plough cultivators and 8,000 families were *jumias*,²⁸ lost their principal economic base with



Tanchangya woman. Farua Union, Rangamati District. (Photo: Raja Devasish Roy)

Mru man. Chimbuk, Bandarban District. (Photo: Ina Hume)





Bawm woman. Boitani Para, Ruma Thana, Bandarban District. (Photo: Ina Hume)

*Chakma man smoking the traditional bamboo water pipe. Betchari, Khagrachari District
(Photo: Christian Erni)*



little or no arrangements to provide them with alternative avenues for income-generation. This exacerbated the already significant crisis situation of cultivable lands, which had already been felt even prior to the construction of the Dam. The marginalized and displaced *jummas* were encouraged to take up commercial fruit gardening, and with few other options open to them, many did so. However, due to problems in marketing, storage and credit facilities, and soil conditions there was limited success in this enterprise and the *jummas* were once again forced to seek alternative avenues for income generation.

In the 1980s some indigenous people turned to forestry.²⁹ However, many of these options were not available to all the hill people. Some indigenous people today eke out a living as casual and seasonal labourers.

Juming

A brief introduction to *juming*, the traditional method of swidden agriculture, is relevant as this system is integral to the indigenous way of life and is a cornerstone of the indigenous culture in the Hill Tracts.

Juming is the system whereby the indigenous farmers or *jummas/jumias* cultivate a number of swidden fields in rotation. This is done in order to enable the swidden fields to regain their fertility during a fallow period that varies from about 6 or 7 years to 20 years, depending on the land-to-man ratio. A specific area of about 4 to 5 acres is cleared in late winter - apart from the larger trees - and left to dry. After a few weeks, depending on weather conditions, the field is set afire. The ash works as a fertiliser, and generally, no other fertilisers are required, or used. The scorched earth facilitates sowing seeds in shallow holes made with a dibble. With the onset of the rains around April-May, the planting starts. A mixture of various seeds including rice, millet, sesame, maize, vegetables and cotton are planted, and some are sown broadcast. Harvesting varies from crop to crop, but by late autumn almost all the crops, including rice and cotton, are harvested, leaving the *jumma* farmer free during the winter to devote time to other activities. However, even after the last harvest for that particular year, the *jumia* family may return to the old *jum* (called a *ranya* in Chakma) for fruits and legumes that have a cropping cycle longer than a year.

The fallow period has recently been reduced to as short a period as 3 years due to various factors such as the reduced area of land available for *juming*, and a substantial increase in local population.

3. Administration

Under the control of their chiefs, each exercising authority over a specific area of the Hill Tracts, two paramount leaders held sway over the area by the late 18th century: the Chakma Raja in the central and northern Hill Tracts, and the Bohmong in the south. This territorial jurisdiction was in place when the British arrived in the region. Later, the leader of the Palengsa clan of the Marma was also recognized as a chief by the British and designated as the Mong Raja or Mong Chief in the north-western part of the Chakma Raja's territory. In 1860 the Hill Tracts was divided into three administrative circles corresponding to the territories of the three Rajas.

The position of Raja is hereditary; by primogeniture for the Chakma and the Mong Rajas, and based on seniority for the Bohmong. The Raja is also the spiritual leader of his people.

The role of the government in the early years of British rule was confined to policing and supervision of revenue administration. All other matters were in the hands of the indigenous administration, with the Raja being the ultimate authority within his/her region. However, this was changed in 1937 when "a revolutionary change reversed the roles of the hill 'Chiefs' and the government (as represented by its superintendent, and later, the Deputy Commissioner) in the administration of the Hill Tracts. Whereas previously the three chiefs were 'charged with the administration of the three circles'³⁰, they now found themselves assigned the role of advising the government on policy matters besides having their administrative powers curtailed."³¹

Indigenous Administrative Structure

The indigenous administrative system is three tiered:

1. *Village level*: The basic administrative unit is a village. Each village has a *Karbari* as its leader (head), appointed from among the villagers, by the Raja directly or on the recommendation of the *mauza* headman. The *Karbari* is responsible for all matters relating to that village;
2. *Mauza level*: A number of villages are grouped together to form a territorial unit of jurisdiction called a *mauza*, of which there are more



*Tanchangya village: Farua Union, Reingkyong Reserved forest, Ramagamati District.
(Photo: Raja Devasish Roy)*

Jum field house in Khagrachari district. (Photo: Philip Gain)





Chakma village Suridat Para, Khagrachari District. (Photo: Christian Erni)

Late afternoon in Empo, a Mru village in Bandarban District. (Photo: Christian Erni)



than 350 in the entire CHT. Each mauza has a headman/woman, who is responsible for collection of revenue, preservation of peace, allocation of agricultural lands including the *jums*, conservation of the natural resources of the *mauza*, administration of customary law etc.;

3. *Territorial level*: At the highest level it is the Raja who has authority over his/her territory.

The internal matters of each village community are decided by its members, including a council of elders under the leadership of the *Karbaris*. Most matters are resolved by consensus; if there are any disputes, the *Karbari* has the decisive voice. Any matters which cannot be resolved satisfactorily, or involve members of other villages, are placed before the relevant *mauza* headman for decision. If required, matters are taken to the Raja, and can be filed as a court case if necessary.

The British introduced the present system of dyarchy in the Hill Tracts. Parallel to the three chiefs there is a state-operated administrative structure with the Deputy Commissioner as the chief executive. The gradually expanding role of the state apparatus has been at the expense of the indigenous system. The power and authority of the Rajas and their headmen and *Karbaris* gradually diminished with each successive administration. And, at present, although they retain certain judicial and revenue powers (including land administration), and in matters relating to personal law, their authority has been increasingly undermined by the concentration of more and more power in the hands of government officials.

National Administration

The Deputy Commissioner (DC) is the chief executive official of the CHT at the district level. Section 7 of Regulation 1 of 1900 states:

“Chittagong Hill Tracts to be a district under the Deputy Commissioner.* The Chittagong Hill Tracts shall constitute a district for the purpose of criminal and Civil jurisdiction and for revenue and general purposes, the Deputy Commissioner³² shall be the District Magistrate, and subject to any orders passed by the Local Government under Section 6, the general administration of the said Tracts, in criminal, civil, revenue and all other matters shall be vested in the Deputy Commissioner.”

The DC plays the key role in all matters relating to the CHT being the highest decision-taking authority, with discretionary power. Since the post was first created in the early 1900s upto the present time, all senior executive posts, including that of the Deputy Commissioner, have been occupied by non-indigenous people, with the Deputy Commissioner being either British, Pakistani or Bengali.

At present each of the three districts in the CHT is further sub-divided into separate sub-districts called *thanas*. The *thanas* also coincide with the policial unit of the same name. The civil administration is under the charge of the Thana Nirbahi Officer (TNO), and the *thana* police are in charge of a sub-inspector. Each *thana* is sub-divided into a number of *mauzas* which are administered by the headmen. A number of *mauzas* are grouped into unions which are the lowest tier of elected local government. However, the focus of the unions is development-oriented, and they have little administrative functions as such.

According to official data, there are 25 *Thanas* in the Hill Tracts with ten in Rangamati, eight in Khagrachari and seven in Bandarban; 356 *mauzas* with 136 in Rangamati, 127 in Khagrachari and 93 in Bandarban; and 110 Unions (Rangamati - 47, Khagrachari - 34 and Bandarban - 29).³³

Before the creation of Bangladesh, the Chittagong Hill Tracts were divided into three sub-divisions which in turn were further sub-divided into *thanas*.

Local Government

In 1989, three councils were re-introduced at the district level in the Hill Districts of Rangamati, Khagrachari and Bandarban by Acts No. 19, 20 and 21 of 1989 (one year after the same system had been implemented in the plains districts). The members are elected on the basis of universal adult suffrage from among the Hill Tracts population in its entirety, and there are separate seats for the different ethnic groups in each hill district, including the settler population. The chairperson has to be from among the indigenous hillpeople.

The activities of the district councils are largely confined to managing a small development fund of some US\$ 500,000:

“The CHT councils, like those in the plains today, and those all over the then province in the 1960s, are basically development bodies with little or no administrative (and legislative) powers. It is interesting to note that the Ershad Government nowhere claimed that it was grant-

ing 'autonomy' while passing the District Council Act of 1988 as it did in the case of the CHT legislation of 1989. The creation of the modern district councils in the CHT can at best be considered as the granting of that which for unknown reasons the Hill Tracts was earlier deprived of. It is in no way a devolution of any significance and is certainly no form of real autonomy to the hill people, nor a restitution of all they have been unjustly deprived of."³⁴

Although twenty-two subjects are stated to be within the jurisdiction of the councils as per the provisions of the relevant legislation of 1989, by the end of 1995, they had actually dealt with only 17 subjects including primary education, agricultural extension, health, cottage industries, co-operatives, fisheries and livestock, social services, sports and the cultural institutions.

Land is not among the subjects transferred to the councils, seven years after their creation although common Section 64 of the District Council Acts (Nos. 19, 20 and 21 of 1989) states:

64. Restriction on land transfer. - *Notwithstanding anything contained in any law for the time being in force, no land within the boundaries of Rangamati [Khagrachari] [Bandarban] Hill District shall be given in settlement without the prior approval of the Council and such land cannot be transferred to a person who is not a domicile of the said district without such approval:*

Provided that, this provision shall not be applicable in case of areas within the Protected and Reserve forests, Kaptai Hydroelectricity Project, Betunia Earth Satellite Station, land transferred or settled in Government and Public interest, land or forest required for state purposes.

Despite the above provision, the Chittagong Hill Tracts Councils are not involved with land administration except in the case of the market centres (Bazar Funds) located in the towns in the region.

This is not the first time that local councils were established in the Hill Tracts. In 1900, during the British administration, a district advisory council composed of the three Rajas was established "to assist the Deputy Commissioner in revenue collection and general administration and to use its influence in the spread of education as well as to improve the health and material condition of the people".³⁵

Again in 1960, on the basis of the Basic Democracies Order of 1959, a district council was formed with 22 members (10 official, 12 public) with the Deputy Commissioner as chairman. The objective of this council

was to co-ordinate the work of the various government departments, with emphasis on culture and educational grants for students.

None of these met the demands of the local people for regional autonomy. Until the 1997 Peace Accord, the Bangladesh Government maintained that the 1989 Local Government Councils are sufficient to meet the demands for local self-rule. It was only with the Peace Accord between the *Jana Samhati Samiti* (JSS) and the Government that an agreement towards meeting the demands of the JSS for regional autonomy was finally reached (see section VII on recent developments).

4. Legal system

The legal system in the Hill Tracts differs significantly from the rest of the country. National legislation does not automatically apply in the Hill Tracts in the absence of an express provision to do so. The manner and form are stipulated in the Hill Tracts Manual (Section 3). Matters of personal law are under the jurisdiction of the indigenous legal system (headmen and Raja's courts) with the Deputy Commissioner exercising revisional jurisdiction. Fiscal and land laws, rules of procedure and the judicial system differ from the rest of the country.

In the indigenous legal system all matters are resolved according to customary law by the *Rajas*, headmen, and *Karbaris*. Any cases, including family law, petty crimes and land law are brought at the village level to the *Karbari*, at the *mauza* level to the Headman and finally to the Raja as the highest court of appeal. Serious crimes such as murder and robbery are relatively rare.

CHAPTER 2

HISTORICAL BACKGROUND

1. Introduction

Historically the Chittagong Hill Tracts* existed as an independent territory and did not come within the authority of outside colonisation until the 18th century.³⁷ Right up to the time of British entry into the Hill Tracts affairs, the different peoples of the Hill Tracts functioned as independent peoples. In his book, Lt. Col. Lewin describes the “Kukis, Lushais, Shendus and other independent tribes” who made forays into British territory.

One of his successors, R.H. Sneyd Hutchinson reports that “The history of the Chittagong Hill Tracts is a record of constantly recurring raids on the part of the bordering hill tribes, against whom it has been necessary to send several punitive expeditions. The earliest record of our dealing with the people of these hills is a letter from the Chief of Chittagong to Warren Hastings, the Governor-General of India, dated April 10th, 1777. It complains of the aggression and violence of a mountaineer named Ramu Khan, the leader of a band of Kukis [Lushais].”³⁸

Historically, the hill region comprised an area greater than what is now the Hill Tracts. It included parts of present day Chittagong (Rangunia, Ramu and Sitakunda areas) and Cox’s Bazaar districts as well as Mizoram (Lushai Hills).³⁹ A popular Chakma ballad, *Chadigang Chara* describes how the Chakma people living in the plains around Chittagong were forced by migrating plains people to move further into the hill region. This is also confirmed by a British surveyor, Francis Buchanan in his account of travels in the area.⁴⁰

Although the Hill Tracts and Chittagong District are contiguous, their historical development has differed markedly. Most of Chittagong and Cox’s Bazaar districts formed part of the Tripura or Arakan kingdoms and later became integrated into the Mughal empire (1666), whereas the Hill Tracts has always retained its independent status and remained in relative isolation with a separate administrative structure where the customary laws of the hill people were paramount:

“Thus despite their geographical proximity, the plain and the hills have for a long time experienced different political and legal regimes. In the

hills, the different peoples were basically self-governing small entities without highly formalised political systems, whereas the people in the plain were always subject to an external power.”⁴¹

However, there were economic factors involved in the relationship between the two neighbours as raw products from the Hill Tracts such as timber, cotton, sesame, sungrass and bamboo found a ready market in the plains, while the indigenous hill people needed utensils, salt and kerosene, which were not available in their area.

2. The Right to Trade

The Chittagong Hill Tracts only became a part of the modern nation-state system in the late 19th century. The major factor responsible for the penetration of outside influences into the Hill Tracts has been economic, based on trade factors. The Hill Tracts could not continue to live in relative isolation divorced from the market economy of the rest of the Indian sub-continent, and this economic relationship was the first step in the process of gradual encroachment into the area by external powers, initially motivated by purely commercial interests, but subsequently guided by expansionist policies.

Tax on trade between the indigenous people and the plains people was exacted initially in cotton, a regional product of the Hill Tracts at the time. This trade tax related to the trade between the *Jummas* (hill people) and the plains traders, and was payable in kind. It did not infringe on any other rights or privileges of the indigenous people, who were recognized as an independent and sovereign people. All agreements, including treaties, were entered into on the basis of equal sovereign powers.

Treaties with the Mughals (1713)

When the Mughal Emperors held sway over India, the Hill Tracts remained outside their direct control, despite attempts made to bring it within the writ of the Mughal emperors. The hill people resisted all such attempts, but finally entered into treaties with the Mughal emperors. In 1713 the Chakma Raja, Fateh Khan, obtained permission from the Mughal Emperors to allow the *beparies* (Bengali merchants) to trade with the *Jummas* on the payment of a one-time tribute of 11

maunds of cotton.⁴²

This tribute on trade between the *Jummas* and the plains constituted the only link, albeit a commercial undertaking, between the Mughals and the Hill Tracts. The Chittagong Hill Tracts continued to be administered by the traditional indigenous authorities without any external interference.

Treaty of Peace (1787)

By 1760, the British East India Company had succeeded in annexing Bengal. The East India Company was essentially a commercial enterprise, and economic interests guided their actions. The Hill Tracts drew their attention as a strategic frontier area which would facilitate access to neighbouring countries, especially as their "relations with the independent frontier tribes, Lushais, Shendus, and others, were very unsatisfactory".⁴³ Another significant factor was that the Hill Tracts were rich in natural resources, in particular forest produce. "The forests contain a great variety of valuable timber trees, and have large areas under bamboo and cane."⁴⁴

The British first started a military campaign in 1776 designed to include the Hill Tracts within their control. They met with strong resistance from the Chakma Raja, Jan Bux Khan⁴⁵, and his general, Ranu Khan Dewan (earlier referred to as Ramu Khan). After the fighting had continued for a decade, the British imposed an economic blockade cutting off essential supplies to the area, including salt, and in 1787, Raja Jan Bux Khan was forced to conclude a treaty of peace with the British Governor General, Lord Cornwallis. By the terms of the treaty, signed at Fort William, Calcutta, the Chakma had to pay about 20 *maunds* of cotton to the British for the right to trade.⁴⁶ This cotton tribute was later extended to the Marmas⁴⁷ and eventually the entire area came to be known as the *Kapas Mahal* (Cotton Area).

British Tributaries

Initially, the jurisdiction of the British extended to the collection of the cotton tax only, but gradually this tax collection exercise was instrumental in the British establishing their authority over the Hill Tracts. However, they did not interfere in the internal administration of the



Cotton from the Chittagong Hill is of high quality and has long been one of its main trade goods. Cotton waiting to be shipped near Bandarban town. (Photo: Christian Erni)

Bamboo, tied together in huge rafts, being floated down the Matamuri River. Bandarban District. (Photo: Christian Erni)



area, which remained in the hands of the chiefs and their headmen, a fact noted in an official record:

“In 1829, Mr. Halhed, the Commissioner stated that the hill-tribes were not British subjects, but merely tributaries, and that he recognized no right of the British to interfere with their internal arrangements. 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 plains. These sums were at first fluctuated 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. The Government did not, however, interfere directly with the internal economy of the Hill Tracts.”⁴⁸

3. British Administration

In 1860 the Hill Tracts were declared a district within Bengal by Act No. XXII of 1860, and a Superintendent appointed to the Chittagong Hill Tracts, under the supervision of the Commissioner in Chittagong. When the process of annexation of the Hill Tracts was formalised, and finalised, there were three *Rajas*. The Chakma Raja whose territory covered about half the Hill Tracts, the Bohmong to the south up to the border with Burma and the Mong Raja in the north-west.⁴⁹ The traditional *Rajas* continued to exercise their authority within their jurisdiction affecting all matters directly related to the indigenous people, with the continued payment of the annual revenue to the British administration in India. However it is recorded that it was the Chakmas who exerted the greatest influence and their chiefs exercised almost total control over indigenous society.⁵⁰

Captain Lewin, who was appointed to the post of Superintendent of the Chittagong Hill Tracts in March 1866 provides an insight into his campaign aimed at bringing the indigenous peoples within his control, through their traditional leaders:

“The real rulers of the Hill Tracts were undoubtedly the chiefs, and they I found, were highly suspicious and jealous of any infringement on their power and prerogatives. My proper place, they considered, was to remain an ornamental representative of Central Government. But this, of course, was not my view.”⁵¹

At that time the three chiefs exercised paramount authority throughout the Hill Tracts. However, the policy of the British was to impose their control over the indigenous rulers as expressly stated by Lewin:

“....they had hitherto opposed all efforts of the Government representative to introduce any change whatever in the administration.... The stick or the sugar-stick - for them the choice - but by one or the other, or by both, I intended to rule.”⁵²

During this time the ruler of the Chakmas was a woman, Kalindi (1832-74). Kalindi Rani was suspicious of Capt. Lewin and his motives and made determined efforts to have him replaced. She lodged complaints against him to his superior, the Commissioner in Chittagong, and even sent her grandson and heir, Harish Chandra, to see the Lieutenant-Governor of Bengal in Calcutta.⁵³ The outcome was an independent inquiry into CHT administration, which found that the Regulations were not being sufficiently observed.⁵⁴ Consequently, relations between Kalindi Rani and Superintendent Lewin were strained and he describes her as being a thorn in the side of the British for forty years.

Autonomous Region

When the British took over the administration of the region in 1860, the major objective was to establish their overall supervisory authority over the area. However, the hill *Rajas* remained in charge of their internal affairs, and the British authorities continued their policy of non-interference.

In 1884, the Hill Tracts was divided into three administrative circles, the Chakma, the Bohmong and the Mong, which more or less coincided with the territorial boundaries of the three rulers. This measure did not alter the status quo and the traditional authorities (*Rajas* and their headmen) were recognized as autonomous entities. Local administrative matters were left wholly in the hands of the indigenous peoples.⁵⁵ Although the number of plains men in the Hill Tracts was nominal (less than 2% of the total population), they controlled the economy.⁵⁶ However, at no time were they granted title or settlement to land. As protective measures to preserve the cultural and territorial integrity of the hill people, and to restrict the entry of non-indigenous people to the area, the British authorities formulated a number of administrative regulations of which the 1900 Regulations are of prime significance.

The 1900 Regulations

A set of rules were enacted in 1892 which were later developed into a more elaborate set of rules under Regulation 1 of 1900. Known popularly as the 1900 Regulations or the Hill Tracts Manual, these safeguards provided for a certain measure of self-determination in the Hill Tracts.⁵⁷ They include judicial, administrative and legal measures in addition to procedural mechanisms.

“Although they paid a trade tax to the Mughals, the Chakma and other tribal people retained their traditional authority over the region. When the region was ceded to the East India Company and subsequently administered by the British there was little change in the relationship. Indeed the British administration formalised the autonomy of the region with the promulgation of the Chittagong Hill Tracts Regulation of 1900 which strictly controlled the entry and residence of non-tribals. Although ultimate authority resided in the British-appointed deputy-commissioner, the political institutions of the hill people were unaffected, and tax collecting, policing and many aspects of criminal and civil law were administered by the tribal chiefs. Indeed, until de-colonisation following the Second World War the hill people enjoyed a wide degree of independence and protection from the intrusion of Bengali settlers from the more populated plains.”⁵⁸

One of the basic elements of the 1900 Regulations was the recognition of the Hill Tracts as a homeland for the indigenous peoples of the CHT in which the rights of the indigenous peoples were provided with special safeguards. The Regulations also included basic safeguards against non-indigenous people taking unfair advantage of the ignorance and/or lack of business acumen of the hill people.⁵⁹

Up to 1930, the entry and residence of non-indigenous people to the Hill Tracts was strictly prohibited. Rule 52 of the original Regulations stated that:

(A) Save as hereinafter provided, no person other than a Chakma, Mogh or a member of any hill tribe indigenous to the Chittagong Hill Tracts, the Lushai Hills, the Arakan Hill Tracts, or the State of Tripura shall enter or reside within the Chittagong Hill Tracts unless he is in possession of a permit granted by the Deputy Commissioner at his discretion.

This visa or entry permit could be granted on fulfilling criteria enumerated in the Regulations including a certificate of good character, reasons for entry to the CHT, duration, sufficient financial means etc. The validity of the permit was generally for twelve months although this could be extended. (Rule 52 was repealed in 1930. After 1930, plainspeople did not require a permit to enter the Hill Tracts.)

Recognition as an indigenous area

The British policy was to preserve the CHT as an indigenous area, distinct from the plains districts and with a separate administrative structure. In keeping with this policy they adopted certain measures:

1. In 1930 the Chittagong Hill Tracts were placed under the direct supervision of the Governor-General-in-Council, whose powers were from time to time delegated to the Governor of the Province;
2. The Government of India Act of 1935 designated the Hill Tracts as a Totally Excluded Area (also known as Wholly Excluded Area) along with other frontier states inhabited by indigenous peoples, thereby emphasising the need to identify and protect the Chittagong Hill Tracts and its people.
The Hill Tracts were recognized as an indigenous area until 1964 when its special status as a separate area was abolished and it was brought within the purview of the legislatures of the country.

4. Constitutional Recognition of the Chittagong Hill Tracts (1947-72)

In 1947, the subcontinent of India was divided into two nation-states - Pakistan for the Muslim-majority areas, with the remaining areas falling within India. During the partition process, the leaders of India and Pakistan agreed to the formation of a boundary commission, chaired by Sir Cyril Radcliffe (known as the Radcliffe Award or Boundary Commission) to finalise the delineation of the national boundaries for the provinces of Punjab and Bengal. The leaders agreed to abide by the decision of this Commission, which was to be accepted as final. The basis for determination of the boundaries was that Muslim majority areas were to be included in Pakistan and non-Muslim areas were to form part of India.

The three chiefs of the Chittagong Hill Tracts, representatives of the

Hill People's Association and the Hillmen's Association,⁶⁰ and other indigenous representatives met with the British Government as well as the political leaders of the sub-continent to express their demands. Their demand was for the Chittagong Hill Tracts to be an independent area. However, if this was not a feasible alternative then the indigenous people of the CHT preferred to be included in India rather than in Pakistan, due mainly to their fear of persecution as an ethnic and religious minority within a future Islamic state.

Although a referendum was held in the Sylhet District of Assam to ascertain the wishes of the people (the majority voted to be included in Pakistan and it was so decided), and a referendum was also held in the North West Frontier Province (where the Muslim majority voted for inclusion in Pakistan and it was so done), no such measure was taken in the Chittagong Hill Tracts. The Commission made no efforts to consult the peoples or their representatives in any way, and a historic decision regarding their future was made without the involvement of the indigenous people, or their consent.⁶¹

The Radcliffe Commission arbitrarily placed the Chittagong Hill Tracts within East Pakistan and made a special announcement four days after the independence of India and Pakistan. The reason for this decision was purportedly to provide a hinterland to the port city of Chittagong, including the River Karnaphuli which was of vital commercial and strategic interest to the port city. Pakistan was composed of two wings: East Pakistan (later to become Bangladesh) and West Pakistan, with secular India in the middle.

The first Constitution of Pakistan, 1956, recognized the Chittagong Hill Tracts as an *Excluded Area*, i.e. that it was an exclusive homeland for indigenous peoples with restrictions on settlement to non-indigenous people. This status was subsequently upheld by the Constitution of 1962 and the CHT named as a *Tribal Area*, whereby any amendments to the administration of such areas required presidential approval. Laws of the Provincial and Central Assembly could be extended to the Hill Tracts as an indigenous area only by specific provisions with express Presidential assent.

However, in 1964, the list of tribal areas was amended by a constitutional amendment in the National Assembly and the CHT was removed from this list. It is pertinent to indicate that this was in contravention of Article 223 of the Constitution whereby the wishes of the peoples con-

cerned had to be ascertained prior to any such measure being adopted.

The legal ramifications of this shift in policy were considerable. The CHT no longer had the official recognition of being designated as a separate homeland for the indigenous people as it had done under its previous designations as Excluded Area and Tribal Area. More significantly, constitutionally, this had the effect of facilitating the access of non-indigenous people to the Hill Tracts, i.e. opening it up to outside settlement. In practical terms, this enabled non-indigenous people to enter and acquire land in the Hill Tracts. However, the Hill Tracts Manual (Regulation 1 of 1900) still existed and lands were not given indiscriminately to plainspeople.

In 1971 Bangladesh emerged from what was then East Pakistan after the turmoil of a bloody civil war. The 1972 Constitution of Bangladesh does not include any provisions recognising the distinct identity of the indigenous peoples or accord the Hill Tracts any special status, despite the efforts of the indigenous representative from the CHT:

“Manobendra Narayan Larma, Member of Parliament for Chitragong Hill Tracts North, in protest, refused to endorse the constitution. Because the main provisions safeguarding [indigenous] interests have been abrogated, government officials in the hill tracts now enjoy wide discretionary authority and constitutionally exercise more power in the district than their counterparts elsewhere in the country.”⁶²

Unofficially the indigenous people are included within the “backward section” of the population (Articles 14, 28 and 29). Demands for the recognition of the special status of the Hill Tracts and its people within the constitutional framework of Bangladesh continue to be voiced by indigenous peoples and their representatives.⁶³

CHAPTER 3

Foreign encroachment on aboriginal lands has resulted in the disintegration of countless indigenous communities. Without the ownership of their lands tribes are hopelessly vulnerable to exploitation, and lack the capital upon which to build a viable future. On these grounds alone the recognition of aboriginal tenure is crucial to their effective protection; but equally important, simple justice demands that the law should acknowledge the rights of peoples who have occupied their lands since time immemorial - lands with which they have typically formed an irrevocable spiritual bond.⁶⁴

1. Introduction

Two concepts have facilitated the process of dispossession of the indigenous people of the Hill Tracts: (a) the doctrine of *terra nullius*; and (b) the attribution of nomadism.

The Doctrine of *Terra Nullius*

In the mid-19th century, territories inhabited by indigenous peoples were “discovered” by European entrepreneurs. The newcomers justified their appropriation of indigenous lands and territories by applying the principle of *terra nullius*, according to which the land belonged to nobody before the colonists arrived. The fact that there were already indigenous peoples living in these areas since time immemorial was ignored, and the original people treated as “backward and uncivilized”. The indigenous legal and administrative systems (which often pre-dated European civilisations) were not recognized as they did not conform to European concepts of governance. The colonisers appropriated these newly discovered lands and declared themselves their sovereign rulers.

However, the concept of *terra nullius* did not gain universal recognition as customary international law. This is highlighted by the decision of the International Court of Justice on the question of whether Western Sahara was a territory belonging to no one (*terra nullius*) at the time of its colonisation by Spain (1884):

“Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by the tribes or peoples having a social and political organisation were not regarded as *terra nullius*. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through ‘occupation’ of *terra nullius* by original title but through agreements concluded with local rulers. On occasion, it is true, the word ‘occupation’ was used in a non-technical sense denoting simply acquisition of sovereignty; but that did not signify that the acquisition of sovereignty through such agreements with authorities of the country was regarded as an ‘occupation’ of a ‘*terra nullius*’ in the proper sense of these terms. On the contrary, such agreements with local rulers, whether or not considered as an actual ‘cession’ of the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of *terra nullius*.”

In a separate opinion, Judge Fouad Ammoun, Vice-President of the Court, declared:

“.....the concept of *res nullius*, employed at all periods, to the brink of the twentieth century, to justify conquest and colonisation, stands condemned.”⁶⁵

However, it was not until 1992, that the concept of *terra nullius* was again challenged in what is popularly known as the Mabo Case. The Australian High Court had to decide who owned the Mer (Murray) Islands⁶⁶ - the islanders or the Queensland Government. The Mer Islanders claimed that the island and its resources belonged to them and not to the state, and provided evidence on their customs and traditions, and on their concept of land (both individual and collective aspects) to support their right.

In a landmark decision the High Court recognized the title of the indigenous people to their ancestral lands. Further it held that this right had survived the British Crown’s annexation of Australia, and had not been extinguished by this colonisation:

“The common law of this country would perpetuate injustice if it were to continue to embrace the notion of *terra nullius* and to persist in characterising the indigenous inhabitants of the Australian colonies as people too low in the scale of social organisation to be acknowledged as possessing rights and interests in land..... Native title to particular land.....and the persons entitled thereto are

ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land."⁶⁷

Parallels can be drawn between the situation of the Mer Islanders and that of the indigenous peoples of the Chittagong Hill Tracts. In a situation similar to Australia, they too had been subjected to external colonisation, both overseas and from within the borders of the nation-state. The title of the indigenous people to the land of the Hill Tracts has been consistently eroded, and the major issue in the Hill Tracts today is the question of land rights.

The Concept of Nomadism⁶⁸

The Bangladeshi authorities have described the indigenous Jumma people as "nomadic tribespeople"⁶⁹ who are constantly on the move. The basis for this myth can be ascribed in some measure to swidden cultivation or *juming* as the *jumia* family rotates the *jum* according to the indigenous method of sustainable land use and soil conservation. R.H. Sneyd Hutchinson provides a brief analysis of the relationship between *juming* and what has been called "nomadism":

"Now as regards the supposed tendency of *juming* to encourage the nomadic habits of the hill tribes, this is quite a mistaken idea. The very great majority of villages are permanent and have occupied their present site for a very large number of years. Take Bandarban for instance; this is the largest of the hill villages and its population is entirely *jumeah*, but it has occupied its present site for more than 80 years and will continue to do so. The same may be said for all the principal villages."⁷⁰

However, the *jumia* always maintains a permanent home-base in the village, although temporary bamboo huts called *moin ghars* may be built on the *jum*:

"This structure, which the Chakma call *moin ghar* ('hill house') is built on the *jhum* or swidden plot after the crop has been planted and is beginning to ripen, and is used to house the cultivator and sometimes his family if the *jhum* is distant from the permanent village. The *moin ghar* is abandoned together with the *jhum* after one crop has been taken. What is significant is that invariably the *jhum* houses do not have the plan of permanent houses..."⁷¹

The component of mobility linked to non-settled traditional occupations within the inherent socio-economic structure of indigenous communities does not negate their rights to their traditional lands. Although traditional economic activities of the *Jummas* such as hunting, gathering, animal husbandry and swidden agriculture require a certain degree of mobility, one cannot call it nomadism. Above all, the practice of non-settled economic activities in no way diminishes or detracts from the rights of the indigenous peoples to their traditional lands, and all these traditional economic activities are in strict conformity with indigenous customs and usages. In addition these activities are always practised within recognized territorial boundaries.

Furthermore, settled agriculture per se is not a definitive factor in indigenous lands claims as confirmed in the famous “Taxed Mountains Case” of the Swedish Supreme Court.⁷² The focus of this case was the rights of the Saami reindeer husbandry communities to certain areas in the northern parts of Jämtland county in Sweden. Saami reindeer husbandry requires herder communities to move with their reindeer herds to new grazing areas as and when necessary. The decision of the Supreme Court on 29 January 1981 rejected the Government’s primary claim that Saami as nomadic people cannot acquire title to land. The decision stated that it was possible for Saami to acquire title to land by using it for traditional Saami economic activities such as reindeer husbandry, hunting and fishing without engaging in settled farming or having a permanent dwelling.

By analogy, the same principle is applicable to the rights of the indigenous peoples of the Chittagong Hill Tracts to their traditional lands which they have used and occupied for centuries, including through *jumming*, hunting-gathering and other traditional economic activities. And although the Government has attempted to arrogate to itself the ownership of the lands of the indigenous peoples of the CHT, the land belongs to the indigenous people as it has always done since time immemorial.

2. Customary Law

Land rights in the Hill Tracts are based on traditional occupations, with the land and its resources providing the enabling environment for subsistence activities. The Swedish Code of Land Laws describes immemorial rights as:

“It is immemorial right, when one has had some real estate or

right for such a long time in undisputed possession and drawn benefit and utilised it that no one remembers or can in truth know how his forefathers or he from whom the rights were acquired first came to get them."⁷³

The land provides the material base for the enjoyment of their cultural rights, and their right to a separate identity as a distinct people. Indigenous land rights are conceptualised within the framework of a separate legal regime, distinct from that of the rest of the country. It is inherent and inalienable, and is conceptualised within the framework of customary rights. Rights and interests in land are regulated and administered by indigenous institutions according to customary law and include provisions for the control, use and management of the land and its resources.

Prior to a virgin piece of land being utilised for a specific purpose, e.g. to cultivate a *jum*, to build a house, a school or temple etc., a simple ceremony is performed to appease the spirits and to ask for good luck. The indigenous people believe that in the ultimate analysis the land belongs to the community, is theirs to use for the duration of their lives, and must be preserved for future generations. According to the report of an international fact-finding mission to the CHT:

"In the land system in the Hill Tracts, hill people could only subsist from their fields as a part of a community, bound in ties of mutual reciprocity. For the shifting cultivators of the Hill Tracts, land is common property, belonging to the community, kinship groups and even members of the spirit world, with individual families exercising the right to use the land - in western terms, a usufruct."⁷⁴

However, as indicated above, western concepts like usufruct do not carry the same connotations in indigenous law. Ownership and possession are cumulative rights, and those lands which are not under individual ownership are identified as common lands, accessible to all members of the community.

Collective Rights

The concept of land rights for the hill people is inextricably linked to collective rights. It is based on customs and usages, and is held in common by the community as a whole, i.e. such rights are common rights. In the Hill Tracts common land rights can be categorised at

four different levels:

1. *Village level.* The village is jointly responsible for the use, management and control of the lands surrounding their village. The head of the village, later known as *Karbari*, is nominated by the villagers themselves and formally appointed by the Raja based on the wishes of the concerned villagers.
2. *Taluk/Mauza level.* A number of villages, usually containing members of one single *goza* (clan), are grouped together under the authority of the *Dewan*, who is often the head of a clan. The *Dewan* in turn has subordinate revenue officials called *Kheja* or *Khisas*.⁷⁵ Historically, the *taluk* was clan-oriented, within the confines of an informal territorial unit. However, after the British annexation of the CHT in 1860 the *taluk* was abolished, and the jurisdiction of the *Dewans* came to be regulated on a more specific territorial basis, eventually taking the shape of the present day *mauzas*, which are clearly defined territorial units of revenue and general administration. There are 356 *mauzas* in the Hill Tracts today.⁷⁶
3. *Raja level.* By tradition, the three Rajas are responsible for the administration of their respective territories including revenue and land claims matters. The Raja holds the land in trust for the people as a whole, and not as personal property.
4. *CHT level.* The indigenous peoples have the right to individually and collectively own, occupy and possess the land of the Hill Tracts. It is theirs to use, manage and control through their traditional institutions, as they have been doing since time immemorial.

The modalities for land allocation are governed by customary practices and usage, and the community decides upon the modalities for land conservation and use. This includes the identification of certain areas as common lands, e.g. grazing grounds etc. Forests and surrounding areas are accessible to all. If any disputes should arise, the matter is placed before the headman/woman and, sometimes, an informal council of elders. Dispute resolution is within the mandate of the indigenous administration.

The concept of shared use is significant in this context. Although individual families have exclusive rights to specific areas such as houses and immediate surrounding areas, the community as a whole shares rights of access and use to the common lands which are the collective property of the entire community. The community has the

responsibility for resource-conservation within these areas, with the ultimate responsibility resting on the *mauza* headman/woman.

When any common lands show signs of soil exhaustion and deterioration, thereby indicating the need for a regenerative period, a decision is taken by the community as a whole to leave this area untouched for a determinate period. In this way, fallow *jums*, areas for sungrass, and bamboo forests are temporarily declared closed in order to accommodate a period for the recuperation of essential soil nutrients.

Individual Rights

Individual land rights extend to the land required for specific agricultural and/or domestic purposes, while the rest of the surrounding hills, fields and rivers belongs to the community as a whole. Individual land rights include the right to a particular *jum*; the right to sufficient land for a home, the right to extract resources including forest produce, the right to hunt and fish, and the right to graze cattle on common lands. However, once a specific allotment is no longer in use or occupation by an individual, e.g. an old *jum*, or abandoned house, then the land reverts back to the community.

Thus, although individual land rights do exist in the CHT, in the ultimate analysis it is the indigenous *Jummas* in common who have the inherent right to their ancestral lands, i.e. a collective right. It is the community which owns the land, with individuals having specific rights of use, possession and title, similar to the concept of private property rights. It is in the nature of tenancy arrangements, with ownership rights accruing to the indigenous people as a whole, vested in the persona of their traditional leaders, the Rajas.

Revenue Administration

Historically self-governing entities with distinct socio-political bases, the legal framework of their land tenure is administered by indigenous authorities under the supervision of their traditional leaders. Each area was divided into *taluks* (later *mauzas*), and managed by indigenous authorities who are responsible for the adjudication of local affairs. The headmen, *Karbaris* etc. are responsible for the implementation of all policy matters in their units, under the direct control of the three Rajas who are independent of each other, and exercise authority in the areas under their jurisdiction.

The principal basis for the land administration is a tax known as the *jum* tax, paid on an annual basis to the Raja through the Taluk Dewan or Talukdar responsible for a specific unit or *taluk*. There is an old adage in Chakma that “*chuchang tagal madid bazelei Razare khazana diya phoribo*” meaning that whenever a *tagal* (an implement similar to a machete) touches the earth, a tax must be paid to the Raja.

Indigenous Concept of Land Rights

There is an argument put forward by the British administration regarding the concept of indigenous land rights in the Hill Tracts. According to this school of thought, the Hill Tracts taxation system is based on the person, and not on the land. This is perhaps a reference to the capitation or poll tax, which is another term for *jum* tax and was levied on the indigenous farmers by the traditional authorities. The British administration stressed that the authority of the indigenous institutions, namely the chiefs and their headmen, was limited to the people only, and did not extend to the land:

“The rights of the headman that were....frequently put up for sale under the authority of British officers were rights affecting human beings.....they had no connection with any form of land tenure.”⁷⁷

Hutchinson elaborates that “This tax is a tribute payable to the State; it in no way partakes of the nature of rent, or bears any relation to the land cultivated.”⁷⁸ There is little doubt that the British Indian Government used several arguments, which one writer described as “legal gymnastics”:⁷⁹

“As was the case with other similar regions, dependent on *jum* agriculture, the hill chief’s influence and control tended to follow clan and tribal divisions rather than clearly defined geographical areas. This provided the necessary excuse for the British Indian Government to propound the legal fiction according to which the local rulers had limited sovereignty over the people but not over the land, and consequently, the Government had supreme and unlimited authority over the CHT land.

The above exercise in legal gymnastics was not unlike other devices that were used to justify the colonisation of indigenous peoples in other parts of the world. In Australia, for example, the

legal theory of *terra nullius* was used to justify the appropriation of lands belonging to the aborigines. According to this theory, the land belonged to nobody before the advent of the colonists, and therefore, the colonists could rightfully claim the land as theirs.

This theory totally ignores the rights of the aboriginal people over land they had occupied for centuries. In the CHT, although the British highlighted the clan and tribal jurisdiction of the chiefs to justify their claim to total sovereignty over the land, they did not hesitate to reverse their policy where it suited them. For example, prior to the introduction of the CHT Manual of 1900, the British ensured that the jurisdiction of the chiefs be regulated by 'local boundaries instead of by tribal distinctions' and directed the concerned officials to henceforth omit the word "Tribal" before "Chiefs" in official documents."⁸⁰

In the Hill Tracts, by the beginning of this century, with the rapid increase in the total population, most of the Chakma and other hill peoples were well aware of the territorial boundaries of their villages, *mauzas*, and of the Hill Tracts as a whole. The boundaries with the plains region of Chittagong were well known and recognized by both the indigenous people, and the plains people in the neighbouring areas. The first major conflict occurred when the hillpeople attempted to resist this encroachment on to their territory and is documented in the detailed accounts of one Francis Buchanan who travelled to the Chittagong Hill Tracts in 1798.⁸¹

Historical data describes the territorial limitations of the traditional indigenous authorities, demarcated by specific boundaries wherein they exercised paramount authority.⁸² The collection of the *jum* tax, among others, was/is also restricted to the territorial limits of each Raja. Thus, one person can be liable for *jum* tax to the authority in which their agricultural plot is located, and to another for the household tax,⁸³ indicating the territorial scope of the tax levied. In addition, there was, and still is, a general exemption of priests, shamans, widows, widowers, bachelors, and sick people under the premise that it is difficult for such persons to use, manage and cultivate sufficient land for a *jum*, even if in actual practice they do cultivate a *jum*.

Thus, the *jum* tax was not uniformly applied as it would had it been a personal tax. The tax was tied to the exercise of the customary right to *jum*, including within it the right to exemptions granted to certain persons as per customary law. Therefore, the source of the *jum* tax indicates that the very payment of taxes in the Hill Tracts originally

accrued from a right in land per se and the indigenous administrative system itself was based on territorial jurisdiction whereby taxes were paid to the revenue officials responsible.

From this one can conclude that the conceptual framework of the land rights of the indigenous peoples are inextricably linked to the land itself, “....and this is the view taken, nearly 50 years later by the Pakistani Board of Revenue: ‘Revenue i.e. the jhum tax is assessed on the jhum field, not on the household’ (Bessaignet 1958:38). Without any change in the law regarding this tax, it ... ‘definitely partakes of the nature of rent’.”⁸⁴

3. Land Administration

Traditionally, under the indigenous system of administration, the land is divided into separate categories depending on the modality of use and management, and revenue paid to the indigenous administrations accordingly.

In 1860, when the British took control of the Hill Tracts, they recognized it as an indigenous area distinct from the rest of the country, and as a matter of policy its administration, including that pertaining to land matters, has always been distinct from the plains districts. However, as the indigenous system of land tenure in the CHT differed considerably from British concepts of land administration, the colonial administrators proceeded to restructure the land revenue system and to bring it into greater conformity with their systems of land tenure. In keeping with this approach, a series of administrative and legislative measures were passed culminating in Regulation 1 of 1900. This Regulation remains the principal instrument regulating the transmission of land rights in the Hill Tracts today.

Regulation 1 of 1900

Regulation 1 of 1900 (or the CHT Manual as it is also called) partially acknowledges some of the collective rights of the indigenous people. However, as the principal regulatory instrument in the Hill Tracts it is important to emphasize that the Manual is not a declaratory instrument but merely regulatory law:

“.....the CHT Manual was not intended to be a declaratory instrument that sought to identify, define and declare various custom-

ary rights and privileges but a regulatory law that sought to regulate already existing rights.....in the case of the special land rights of the indigenous people of the CHT, these rights are not their rights because the CHT Manual says so, but because they have been exercising these rights uninterruptedly for so long. The Manual merely contains the provisions relating to the control and regulation of already existing rights.”⁸⁵

One of the principal changes enforced by the Regulations was the formal demarcation of the Hill Tracts into three separate “Circles”, and the designation of the three traditional leaders as “Chiefs”. Further, these leaders, who had enjoyed the status of heads of state within their territories for centuries, now required the national authorities to recognize their right to rule and were merely “charged” with the administration of the Hill Tracts.

The British formally divided the CHT into territorially defined administrative units known as *mauzas* to replace the earlier system of *taluks*. A headman was appointed as the responsible authority for each *mauza*, his responsibilities included the collection of revenue. Each *mauza* comprised a number of villages, each of which was generally headed by a *Karbari*.⁸⁶ The land use structure of the indigenous people provided the basis for the revenue administration, with specific taxes levied on each category of land. The promulgation of the 1900 Regulations was the first step in the erosion of the land rights of the indigenous people. It is the principal legal instrument applicable in the Hill Tracts and remains valid today:

“These Regulations still form the basis for the civil, revenue and judicial administration of the CHT, although there have been several amendments to the rules and several new laws have been made applicable to the CHT between 1900 and up to the present.”⁸⁷

At present there is a dualistic framework of land rights in the Hill Tracts - customary and national. A summary of the legal framework of the major land use arrangements is given below with references to applicable national legislation, in particular to Regulation 1 of 1900.

Common Lands

The common lands are those which belong to the indigenous community with shared rights of access. The indigenous people have a right to

these lands and its resources, by virtue of their common ownership of these areas, and traditional economic activities such as fishing, hunting and gathering are carried out in these areas. *Jum* lands fall within this category, as do the lands used for orchards, grazing and for growing sungrass (used to make thatched roofs). The forests are also included within this category of *mauza* commons, and are the common property of the indigenous community with equal rights of access, use and extraction.

Traditionally no taxes were levied for the use of these lands.

National Legislation. The government does not formally recognize the rights of the indigenous people to the common lands as a collective right. It regards these lands as state-owned. They are also known as *khas* lands, i.e. state lands, while the Forest Department categorises these lands as *Unclassed State Forests (USFs)*.

The lands not demarcated as Reserved and Protected Forests (see later), which are not settled or leased out in the name of any private individual or corporate body, are regarded as Unclassed State Forests (USF) by the national administration for purposes of forest extraction and export. In actual practice these are the common *jum*, forest, hunting and fishing grounds, and homestead lands of the indigenous people. An Asian Development Bank (ADB) financed report on the Hill Tracts forests describes these common lands in the following manner:

“In addition to the Reserved Forests, the balance of the Chittagong Hill Tracts District amounting to 3,850 square miles is termed “Unclassed State Forest” (U.S.F.). In this area, the [indigenous people] are allowed to practice juming or shifting cultivation and to extract any forest produce (fuelwood, bamboo and house construction poles and timber) to meet their domestic requirements.”⁸⁸

Initially, the Unclassed State Forests were divided into units called *mauzas* by the district administration (initially British), in consultation with the Chiefs and headmen. With time, more and more of the Unclassed State Forest lands were settled in the names of private persons for agriculture or horticulture, and for all practical purposes these now fall within the juridical regime of private property rights. The area of the USFs is in reality far smaller than that mentioned in the above report.

The CHT Manual recognizes *some* of the rights of occupation and extraction of common lands, although taxes are levied for some extractive activities. The indigenous people have qualified rights to homestead lands, the extraction of sungrass (Rule 45A), the right to herd (Rule

45B), and the right to *jum* (Rules 34, 41, 42, 45 and 50).

Jum Lands

The hills and adjacent slopes of the Hill Tracts are suitable mainly for *jum* cultivation. The indigenous people have communal rights to these lands, as well as the individual right to its use. In earlier times, and even in 1918 when the population of the Hill Tracts was about 200,000 *juming* was a viable system and provided the hill people with their basic necessities, in addition to surplus produce which could be bartered for other supplies. It was the principal occupation for the majority of the indigenous people, and nearly all farmers practised slash and burn agriculture. Presently only a small portion of the indigenous people are engaged in *juming*.

Every indigenous family has the right to cut a *jum* where they choose, subject to the land not belonging to another. Various factors are taken into consideration in allowing a *jumiya* to cultivate a particular piece of *jum* land including whether the specified period to allow the soil to regain its fertility has been completed. A *jumiya* retains the right over his *ranya*⁸⁹ (old *jum*), and in case of dispute the *talukdar* or *mauza* headman decides the matter.

Jum Tax: Historically, an annual tax was paid for the right to *jum*, and collected by the *talukdar* (later headman/woman) who would enter the details in a register called a *jum tauzi* (now included in Regulation 1 of 1900 as Rule 42(4)). The particulars included in the *tauzi* are the name of the head of the household, names of family members, whether they were *juming* that year or not, and the details of the *jum*. Every year the *jum tauzi* (list of *jumiyas*) had to be submitted by each headman/woman to the Raja (Rule 42 (5) of Regulation 1 of 1900). The Raja, after verification of the list, forwarded a copy to the Deputy Commissioner certifying the persons who were exempt from the payment of the *jum* rent, e.g. *Karbaris*, bachelors, widows/widowers etc. (Rule 42 (2) of the Regulations). On the basis of this list the headman collected *jum* tax (rupees six per *jum*). If a householder did not *jum* he was not assessed for rent.

There is also the practice of *parkulya* mentioned earlier whereby a *jumiya* family paid the tax in full to the *mauza* headman where they lived, and half to the headman of the *mauza* where they actually cultivated a *jum*, usually the neighbouring one known as *mauza parkulya* (Rule 42 (3) of the CHT Manual), and *circle parkulya* if the *jumiya* lived in the territory

of one *Raja* but cultivated in another *Raja's* area. In the latter case he/she was liable for full *jum* tax to both *Rajas*.

The indigenous *jumiya* paid an annual tax to the *Raja* either through the clan head (or *Dewan* or *Khisa* as the case may be) and subsequently through the *mauza* headman/woman. The *jum* tax is collected by the village administrative authorities, and paid into the central indigenous administration.

The British, in stages started to appropriate paramountcy and began taking a share of this tax. However, to this day the Government share is the least with the *Raja* and the headman/woman getting a larger portion of the tax.⁹⁰ Although this remains applicable in theory, in practice only nominal sums are received as *jum* tax.

There is no formal lease required for *juming*, although all the relevant details are duly recorded in the *tauzi* which is sent every year to the central land registry at the *Raja's* office, which is updated on a regular basis. Presently, *juming* is allowed on a restrictive scale only.

National legislation. The customary right to *jum* is formally recognized in the CHT Manual (Rules 34, 41, 42, 45 and 50) and taxes are paid for the exercise of such right (as indicated). Under the provisions of the CHT Regulation, the chief civil servant in the Hill Tracts, the Deputy Commissioner has the sole authority to control and regulate *juming*:

*Rule 41. Control and regulation of juming - The Deputy Commissioner is empowered to control and regulate juming in the C.H.T.s and to issue and enforce such orders as he considers necessary for the same. He may for sufficient reasons declare any area to be closed to juming or restrict the migration of juming.*⁹¹

In 1988, on the advice of the General Officer Commanding⁹² of Chitragong, the Deputy Commissioners of the Hill Tracts placed a ban on *juming* in the area although the relevant legislative provision empowers the DC to “control and regulate” but not totally prohibit *juming* (see above). The indigenous people strongly believe that the main reason behind the order was to make it difficult for them to survive independently in the remoter areas which were under relative influence of the Shanti Bahini (Peace Corps).

However, the official reason was that *juming* caused soil erosion, thereby contributing to deforestation and that *juming* is environmentally detrimental being a “a system for food production before the invention of technological innovations....”⁹³ However, for the indigenous



Chakma women fishing. Kaptai Lake, Jurachari Thana, Rangamati District. (Photo: Ina Hume)

Bawm women and boy collecting snails in the Ruma River. Ruma Thana, Bandarban District. (Photo: Ina Hume)





Chakma women selling firewood in Rangamati Town. (Photo: Christian Erni)

Tanchangya tea stall. (Photo: Subarn Chakma)



people *juming* is not only a way of life, it is a means of survival and is described as an “extremely successful human adaptation to the rigours and constraints of the humid tropics.”⁹⁴

The CHT Regulations also recognize the role of the headman in resource-conservation and for *juming*:

“41A. The headman is responsible for the conservation of the resources of his mauza areas. For this purpose any headman may

- a) prohibit the removal of bamboos, timber and other forest produce by residents of his mauza other than for their domestic purposes or by non-residents of his mauza for any purposes;
- b) exclude any area or areas in his mauza from the *jhumming* area with a view to keeping such area or areas as a mauza reserve of bamboos, timber and other forest produce;
- c) prevent newcomers from cutting *jhums* in his mauza, if in his opinion their doing so is likely to result in a scarcity of *jhum* for his own tenants in future years; and
- d) prevent any person from grazing cattle in his mauza when such grazing is harmful to his *jhumming* area (b).”

Juming is, however, on the decrease due to (i) the progressive diminishment of the area available for *juming* and (ii) constantly reducing yields due to overcropping by marginalised farmers who were displaced by the hydroelectric project and/or as a result of the prevailing unrest. Infringements of this rule are punishable by the imposition of financial penalties (Rules 41 and 42).

Anomalies of *Juming* in the CHT

It is ironic that the history of *juming* in the Hill Tracts has been characterised by the inconsistencies of prevailing administrative policies. Initially, the British discouraged *juming* as being conducive to nomadism, and unsustainable as an agricultural system, and made efforts to stop *jum* culture and induce the people to settle and cultivate with the plough.

advantages of *juming* and provides an excellent analysis of the sustainability of the practice. He also emphasizes the permanent nature of *jum* cultivation for the indigenous people, as there was a lack of suitable land for plough or settled cultivation, exacerbated by the fact that the Government had classified one fourth of the Hill Tracts area as reserved forest where cultivation was prohibited:

“If the system of *juming* was abandoned the ranges of hills would be entirely useless. The absence of stone, the light nature of the soil and the steepness of the hillsides make cultivation by terraces an impossibility, and the hills of the interior would lie idle instead of as at present supplying food and valuable produce for barter to the inhabitants of the district, as well as being a source of considerable revenue to Government”.⁹⁵

Again, a government commissioned study of the CHT in 1918 comes to the following conclusion:

“It is not possible to understand the economic development of the Hill Tracts, unless the fallacy that the cultivation of hill sides by *juming* must be abolished, is dispelled...It is not possible to estimate the area still available for plough cultivation, but it is certain that it alone would not be sufficient to support the mass of the *jhumia* population... It must be accepted that *juming* will continue, and that the greater portion of the population must be supported by hill-side cultivation.”⁹⁶

However, the policy decision of the British administration to discourage *juming* remained unchanged. By the middle of the 19th century, most of the hillpeople who lived along the river banks such as the *Chakma* and the *Marma* had adopted the plough, and by the mid-1900s, much of the land suitable for plough cultivation was being tilled using this method. However, as the amount of plough land in the Hill Tracts was limited, many of the indigenous people remained *jum* farmers, including those situated along the hill ridges such as the *Pankho* and the *Khumi*.

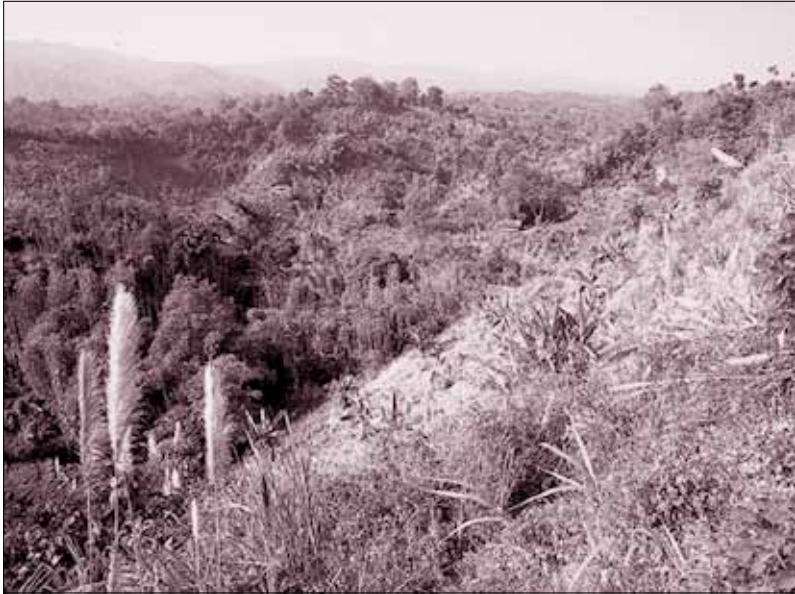
Right to Homestead Land

As per customary law every indigenous family has the right to sufficient land for residential purposes. Most indigenous people own and build their houses, often with the help of the entire community, and renting is rare. The right to adequate land for a house, outbuildings,



Paddy land in Baghaichari Thana, Rangamati District. (Photo: Ina Hume)

Jum land in Khagrachari District. (Photo: Christian Erni)





Submerged fringe land near a Bawm settlement. Kaptai Lake, Rangamati District. (Photo: Christian Erni)

*Tanchangya women and girls warming themselves by the fire in their homestead on an early morning.
Farua Union, Reingkyong Reserved forest, Rangamati District. (Photo: Raja Devasish Roy)*



and surrounding area to grow vegetables etc. for daily needs is an inherent and inalienable right of every indigenous person.

The allocation of adequate land to build a house is the responsibility of the village authorities, the *Karbari* or headman, and the decision is dependent on certain criteria including land availability, the existence of prior claims to the designated area, the surrounding areas, as well as family and kinship links.

No formal lease or deed is required. Notification and registration in the indigenous land administration serves as documentary evidence of title, and revenue is paid to the *talukdar* of the *tauzi* (later on to the *mauza* headman/woman).

National legislation. The customary right to land for house-building purposes was partially incorporated into the Hill Tracts Manual, within specific parameters. There is a limit on the amount of land which can be used for such purpose, and in addition, the permission of the Deputy Commissioner is required under certain circumstances:

50. 1) *Occupation of non-urban land for homestead and resumption of land for public purpose - A hillman may occupy non-urban khas⁹⁷ land up to a maximum of 00.30 acre for the purpose of his homestead with the permission of the headman of the mauza concerned without obtaining any formal settlement from the Deputy Commissioner. The headman shall maintain a Register of such lands allotted by him to the local families for their homestead.*
- 2) *A hillman willing to occupy non-urban land exceeding 00.30 acre for the purpose of construction of homestead shall obtain a settlement of the land from the Deputy Commissioner or the Sub-Divisional Officer concerned. Such land settled for the purpose of homestead will be treated as non-agricultural land, and rent thereof will be fixed as per rule 34(I) (K), *ibid.**

Presently, the customary right to lands for house building has been restricted to rural areas. The high population density in urban areas makes it impossible to find any unoccupied land, and in the market areas, commercial plots are already registered in the names of their owners - generally plains traders and/or merchants.

Forests

resources, including the forests for their economic and spiritual well-being. Traditionally the right to use and extract forest produce existed without any restrictions except those prescribed under customary law. However, between 1875-1882, the British administration initiated a policy of curtailing the rights of the indigenous people to the forests.⁹⁸ This practice continues to this day.

Initially, the forests were divided into two categories:

- 1) Reserve Forests; and
- 2) Unclassed State Forests.

However, in the mid-60s a third category was introduced:

- 3) Protected Forests. (For USFs see above).

Reserved Forests

By 1882-83, about one fourth (24%) of the total area of the Hill Tracts - 1,244 sq. miles - was Reserved Forest.

“These areas were created as reserves between 1875 and 1882 with the intention being to protect the catchment areas of the major rivers in the area. The principal reserves are as follows:

Kassalong Reserved Forest (north-east part of CHT)	406,542 acres
Rankhiang Reserved Forest (east-central part of CHT)	190,521 acres
Sangu Reserved Forest (south-east part of CHT)	83,612 acres
Matamuhari Reserved Forest (south-east part of CHT)	100,467 acres
Other minor Reserved Forests (central part of CHT)	15,018 acres
<i>Total</i>	<i>796,160 acres</i> ⁹⁹

National legislation. The practice of creating Reserved Forests was institutionalised by Section 3 of the Forest Act of 1927:

3. *Power to reserve forests - The Government may constitute any forest-land or waste-land or any land suitable for afforestation which is the property of the Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, as reserved forest in the manner hereinafter provided.*

According to annotated comments to the Forest Act, it is clear that if the land is a part of permanently settled land, it is a private property, and it would therefore not be legal to declare it a Reserved Forest.¹⁰⁰ Only forests and wasteland may be reserved.¹⁰¹ Wasteland occupied by Bhumidar may be reserved.¹⁰² The Act was amended in 1974 to apply to Bangladesh (Act 53 of 1974). However, measures to ensure that lands which are to be included in a proposed Reserved Forest are not subject to conflicting claims, are seldom taken. So far the method has been to merely declare a specific area as Reserved Forest without ensuring that private rights have not been violated. In addition, the indigenous people are often ignorant of national legislation and do not take the necessary steps to secure their rights. Furthermore, the procedural regulations are cumbersome and complicated and do not facilitate a speedy process of adjudicating conflicting claims.

Generally, what happens is that the rights to the forests and their resources are vested in the Government, and that any private rights therein are extinguished. The Bangladesh Forest Department (BFD) is responsible for the management of the forest reserves, the protection of forests, afforestation, research, extension, collection of royalty charges on forest produce and the protection of game.¹⁰³ Within the forests, there are no provisions to recognize the collective rights of indigenous people to the use and extraction of the forests and their resources. The principal impact of creating Reserved Forests has been to effectively criminalize the economic activities of indigenous people. Infringements carry penal sanctions, and today violations of the Forest Act account for most of the “crimes” allegedly committed by indigenous people.

This practice of demarcating Reserved Forests, introduced during the period of British administration, continues to this day. In 1992, the Government initiated a process to create Reserved Forests from some 177,849.57 acres of land within the three districts of Rangamati, Khagrachari and Bandarban.¹⁰⁴

Protected Forests

In 1960 the concept of protected forests was introduced. Specific areas

of what the British administration had earlier classified as Unclassed State Forest, i.e. common lands of the indigenous peoples, were re-categorised as Protected Forests. Although Protected Forests were not initially intended to be an interim phase prior to their upgrading to Reserved Forest, sometimes this has been the case, e.g. the Gazette Notification of 21 May 1992.

The major Protected Forests in the Hill Tracts are in the Rangamati district (Kashkhali and Betbungia *mauzas* and in Barudgola, Ballalchara and Kutubdia *Mauzas*).

National legislation. As with the Reserved Forests, the Protected Forests are also created by Government notifications in accordance with the Forest Acts, and are under the control and management of the Bangladesh Forest Department (BFD).

Within the Protected Forest the BFD has sole control. The *mauza* residents have some access to forest produce and can cultivate a *jum* in designated areas. In some cases, the *jumiyas* work as waged labourers of the BFD and plant teak and garjan trees in their *jums*. The forest guards pay some wages (far below the market rate) for taking care of the trees. Once the area is covered with trees, the indigenous people are ordered to move from the area, and the trees remain the property of the Government. All proceeds from their sale or export are taken by the Government.

Whereas in a Reserved Forest the Government assumes all rights, and all other rights are subsumed, in a Protected Forest only those rights which are specifically mentioned in the official notification are nullified; all other rights may continue in a restricted manner. In the case of a Protected Forest, no notification can be made unless the nature and extent of the rights of the Government and of private persons over the notified land have been enquired into and recorded by a survey or settlement, or in such other manner as the Government might think sufficient. Every such record is presumed to be correct until and unless the contrary is proved. However, in an emergency situation the Government may declare the establishment of a Protected Forest pending such inquiry, but that this must not be done to abridge or affect any existing rights of individuals or communities.¹⁰⁵ (Section 29 of the Forest Act).

In actual practice, few measures are taken to determine the nature and extent of pre-existing rights in a proposed Protected Forest area, and given the lack of means and of knowledge at the local level, there is little opportunity for indigenous people to have their prior claims

recorded. In addition they have little access to the necessary resources to file a petition or a counter-claim to assert their rights.

Paddy Lands

The lands which are used exclusively to grow wet rice are known locally as paddy lands, and are mainly to be found in the valleys and low lying areas. Traditionally, the majority of the indigenous people were *jum* farmers, but during the time of Raja Dharam Bux Khan, when the capital of the Chakmas was still in Rajanagar, Rangunia in the foothills of Chittagong, the indigenous people learnt how to use the plough with the help of some farm labourers from the plains brought in expressly for that purpose by the Raja. The plough was gradually extended, and by the mid-19th century it became the preferred form of cultivation in the valleys and low lying areas of the Hill Tracts.

This was achieved in large part due to the concerted efforts of the national administration and the co-operation of the Rajas and other leaders. However, in 1960 after the Kaptai Dam was built, a vast quantity of ploughlands in the Hill Tracts were submerged and over 100,000 people were displaced. There remains only a meagre amount of land suitable for plough cultivation in the Hill Tracts and the district that once produced a surplus in foodgrains is now almost barren in this respect.

Plough Lands

Strict records were maintained by the indigenous authorities of the details of all plough lands, including the name of the owner, boundaries and other relevant information. This was all duly noted in the village register by the *talukdar* or *roaja* (later headman/woman), and in the *taluk* recording data. By 1891 there were about 1,250 settlements of paddy lands in the three circles as noted by a British administrator. With the Regulation of 1900, the British administration formed the *mauzas*, the principal objective being to regularise the land settlement of the Hill Tracts, and in particular the plough lands:

“The number of these plough settlements, their sudden increase (due not to those monstrous rules but to progress and the increase of population and its pressure from the plains) and their diffusion throughout the three Chief’s Circles shew that the time for beginning a regular land settlement has come. We have the larger

divisions, and we have the headmen agency. All that we want are the smaller local units, the *mauzas*. But wherever there is plough cultivation or wherever, without it, there is a group of settled inhabitants, a *mauza* can be formed...I asked that they might be so defined, and I have therefore, provided for the gradual formation of *mauzas* and for the settlement of the arable lands in them by the agency of the headmen and on a *Jamabandi* which is to be annually examined and except as regards rates, revised."¹⁰⁶

Prior to the formation of the *mauzas*, the Hill Tracts functioned under the system of *taluks*, which encompassed an area greater than a *mauza*. The British administration ensured that when they demarcated the *mauzas* that they "must lie wholly within a *taluk*, to be formed."¹⁰⁷

National legislation. (1) The 1900 Regulation. The major impact of the 1900 Regulation was the redefinition of the relationship between the state administration with the indigenous communities of the Hill Tracts, to one that was based on land use. The national administration took upon itself the role of landlord with the indigenous farmers as tenants on the assumption that all the land in the Hill Tracts was state-owned. Thus, the indigenous farmers became leaseholders in their own territory.

As stated in Rule 34 of the original Rules for the Administration of the Chittagong Hill Tracts in accordance with section 18 of the CHT Regulation, 1900:

"34. All lands held for plough cultivation on lease from Government, under whatever rules they have been or maybe granted, are subject to the condition that they cannot be sub-let or transferred, except on hereditary succession or with the consent of the Commissioner. No partitions can be made without the consent of the Commissioner. For a tenant to temporarily make over his holding to another person in the case of illness, incapacity, minority, absence on a journey or in the like exigency, is not to sub-let; but in no such case can the tenant recover from his substitute or trustee a higher rent than he has himself to pay."

Hutchinson notes the *raison d'être* for this protective mechanism against subletting:

"The principal restrictions to impose are that sub-letting shall only be recognized amongst the hillmen...and such settlements must only be made by the Superintendent and in their case only sub-letting to hill-men may be permitted. In all cases of sub-letting it will be necessary that the sub-lease be registered in the



Dawn in a Tripura village. Boitani Para, Ruma Thana, Bandarban District. (Photo: Ina Hume)

In a Mru village. Alikadam Thana, Bandarban District. (Photo: Ina Hume)





Young Chakma woman weaving with traditional backstrap-loom. Khagrachari District. (Photo: Christian Erni)

Tripura Woman husking paddy. Boitani Para, Ruma Thana, Bandarban District. (Photo: Ina Hume)



Superintendent's office and that the rights of the sub-lessees must be safeguarded."¹⁰⁸

A specific rent was payable for the plough land and details of each plot were included in the rent roll or *jamabandi*.¹⁰⁹ The rent was paid to the headman of the *mauza*, under the supervision of the Chiefs.

(2) *Amendment of Rule 34.* In 1971 Rule 34 was amended to allow the settlement of land to outsiders. The salient features are:

- a) Land could be settled to "outsiders" with the prior approval of the Board of Revenue - Rule 34(b), (e), (l);
- b) Land could also be settled to deserving industrialists with the prior approval of the Board of Revenue - Rule 34 (h);
- c) *Non-hillmen resident*¹¹⁰ was defined as "a person who has a house in the district of Chittagong Hill Tracts for at least 15 years and no house outside that district, or has a house in the district of Chittagong Hill Tracts with agricultural land settled by the Deputy Commissioner of that district without any house or agricultural land outside that district." (Explanation to Rule 34 (n)).

The major impact of this amendment was that the settlement of land to "outsiders"¹¹¹, i.e. non-indigenous persons, was now permitted under the provisions of Regulation 1 of 1900. By mid-1900, most plough lands were recorded in the names of the hillpeople by the headman in his/her rent roll or *jamabandi*, as well as in the national administration's land records office. Thus, title to these valuable lands is recorded not once, but twice with both the national and the indigenous administration maintaining records. However, during the settlement programme (see later) the plains settlers were allotted these lands:

"The local farmers had been occupying and cultivating the much-prized valley lands - a large part of which was later taken over by the settlers - before the settlers ever entered the CHT. As for title to such lands, almost all such lands were, and are, recorded in the names of hillpeople. The titles in some cases may have been less than perfect, due largely to defects in the land administration system or due to lack of knowledge on the part of some hill people, but there is absolutely no case for saying that the hill people held no valid legal or possessory title to the lands in question."¹¹²

Fringe Lands

With the submersion of 40,000 acres of agricultural (paddy) lands by the Kaptai reservoir, there is an even greater shortage of these fertile rice fields. In an effort to increase rice production, the lands situated below the high water marks of the Kaptai lake are also being cultivated, in addition to the valleys and low lying areas. These are known as fringe-lands as they are on the periphery of the lake, and due to fluctuation of the lake level they are out of the water for a period of time every year.

The fringe lands surface from the shallow beds of the Kaptai Lake during the dry season (November to March). Fringe lands are suitable for wet-rice cultivation and may produce one crop, depending on the level of the water. The rise and fall of the water level of the lake is haphazard and does not follow a set schedule or pattern.

Due to the unpredictability of and lack of prior information about the time schedule of the water level, regulated by the Power Development Board, it is never certain whether or not the harvest will be reaped. If the water level rises too fast, the rice paddies are submerged prior to harvesting, and if the water level falls too slowly then the fringe lands are too dry for cultivation, resulting in low or no crop yield. During the earlier Pakistan administration, there was an institutionalised framework for information sharing, and as a result the chiefs were kept informed about the water level of the lake. However, this practice was discontinued by the Bangladeshi administration, although the first chairman of the Rangamati District Council, Gautam Dewan requested the re-institution of this mechanism in order to provide this vital information to the people concerned prior to any changes being made to the water level.¹¹³

National legislation. No formal settlement is required for the fringe lands. In practice, the farmers obtain an informal one-year lease from the headman in order to cultivate these lands, which is generally automatically renewed. A certain amount of tax is payable to the Headman/woman for the use of these lands.

However, in a recent development in Dighinala Thana (police station jurisdiction) in Khagrachari district, headmen have been informed that the rights of fringe land lessees who did not *renew* their leases from the office of the Thana Nirbahi Officer (TNO) would lapse. This is despite the fact that the prevailing practice for more than 30 years - in this area, and in other parts of the CHT - has been for the headman to regulate

these leases on an annual basis, and in an informal manner without any formal applications and lease allotments.

Local headmen are known to have expressed extreme discontent with this new law especially as there are thousands of indigenous people including many owners/lessees who are absent from their original homes either as international refugees in India, or internally displaced within the Hill Tracts region.

Grove Lands

With the construction of the Kaptai Dam and the submersion of 40% of the agricultural land, the indigenous people had to seek alternative avenues for economic self-sufficiency. The Government made concerted efforts to introduce fruit farming in the Hill Tracts, instead of rice cultivation, which, in addition to pulses and vegetables, was the principal crop. The lands used for fruit farming and for forestry are commonly known as grove lands.¹¹⁴

The East Pakistan Agriculture Development Corporation (now Bangladesh Agriculture Development Corporation - BADC) was established in 1962 to assist the indigenous people in fruit farming, as a follow up to the Forestal Report. Initially the horticulture projects were a success but in the long term analysis this was not a profitable venture given the problems of soil erosion and difficulties in marketing and storage.

National legislation. In the case of large gardens, leases are registered with the Headman and the Upazilla Land Records. However, for the smaller gardens, there are no records of registration and the absence of ownership titles was a serious problem for the indigenous farmers in gaining access to credit and market facilities, in addition to providing documentary evidence of their rights to the land.

4. The Local Government Councils

In 1989 the Bangladesh Government enacted the Local Government Councils Bills for the three districts of Rangamati, Khagrachari and Bandarban (Acts 19, 20 and 21 of 1989) to establish local councils in the three Hill Districts.

There were no procedures to consult the people concerned, or to involve them directly in the process of creating such councils. Their es-

tablishment was vehemently opposed by the indigenous people as the Local Government Councils (LGCs) were perceived as an attempt to legitimise the Government's control over indigenous affairs under the guise of "local government". There were processions, protests and other non-violent demonstrations against the imposition of the Councils.

However, the three councils were created in 1989, and although they are operational today, the extent to which the indigenous council members have any power or authority remains questionable. No reports of their activities have been published, nor has any information about their plans and programmes of action. Of the 22 subjects under their jurisdiction, many have not been transferred to the Councils, of which the most significant is land as noted earlier (see under previous chapter). However, it is relevant to note the provisions of Section 64 of the District Council Acts:

"64. Restriction on land transfer. Notwithstanding anything contained in any law for the time being in force, no land within the boundaries of Rangamati¹¹⁵ Hill District shall be given in settlement without the prior approval of the Council and such land cannot be transferred to a person who is not a domicile of the said district without such approval.

Provided that, this provision shall not be applicable in case of areas within the Protected and Reserve forests, Kaptai Lake Area, land transferred or settled in Government and Public interest, land or forest required for state purposes."

Despite this legislative provision, in actual practice the power and authority of the local government councils on land matters is limited. To highlight this fact, the following considerations are significant indicators of the extent of their authority:

1. *Amount of land.* From the above proviso if one takes into account the amount of land covered by the Protected and Reserve Forests, the lake, and land transferred, settled or acquired by the Government and Public interest, out of a total area of 5,089 sq. miles there is not much that remains. And from this amount if one excludes the private holdings, it is questionable if very much land at all much land actually remains to be settled with the approval of the local government councils;
2. *Scope of authority.* The work of the local government councils is presently limited to administrative and personnel matters. In the Hill Tracts, it is the military which has the actual power,¹¹⁶ and to

a lesser extent the civil authorities through the DC as the chief executive officer. In addition, the Board of Revenue exercises overall authority for revenue matters.

CHAPTER 4

POLICIES AND PROGRAMMES: LAND DISPOSSESSION

1. Introduction

Various policies and programmes have been implemented in the Chit-tagong Hill Tracts from the time of the first colonial power - the British - to the present national administration. The thrust of these policies and programmes has been to strengthen overall national development, with little regard for their impact on the indigenous people and their traditional way of life. Conceptualised within the framework of development projects and programmes, they have aimed at improving the national economy first and foremost, and their effects on the economic activities of the local people have not been beneficial.

The development policies implemented in the Hill Tracts have had a two-pronged approach: (i) financial gain for the state administrative powers; and (ii) the integration of the indigenous people into the mainstream national culture. These two objectives are not always mutually exclusive, although during the British administration, their policies were not aimed at cultural assimilation. Their activities centred on economic benefit alone.

However, one feature common to all policies directed towards the Hill Tracts, in the past and present, is the consistent disregard for the indigenous peoples and their value systems and traditional knowledge. There is a noticeable lack of mechanisms available for consulting with and the participation of, the people concerned in the formulation, implementation and evaluation of projects and programmes undertaken in their area. Development projects such as hydroelectric dams, forestry, horticulture etc., have been implemented with a top-down approach, and indigenous people have had to seek immediate and effective responses to the flooding of their homes and farms, and the divestment of their ancestral lands without recourse to the due process of law. Traditional occupational activities have been transformed into crimes.

As a result, the relationship between the state and the indigenous peoples of the Hill Tracts has been anything but harmonious. Instead it has been conspicuous for the ignorance and suspicion of one side, and the dissatisfaction and mistrust of the other. The following is a summary of the major policies and programmes implemented in the

Hill Tracts, including a brief analysis of their impact on the land and related resource rights of the indigenous peoples:

1. Forest Policy;
2. The Hydroelectric Project at Kaptai;
3. The Forestal Report;
4. The Settlement Programme;
5. Counter-insurgency Strategies.

Several detailed case studies documenting the process of dispossession of indigenous people as a result of the government's development policies are provided in the Annex.

2. Forest Policy

Historically, the indigenous people of the Hill Tracts had the right to use and extract forest produce, including the right to *jum* and the right to reside therein. The major part of the Hill Tracts was until recently covered with tropical forest. Lorenz Loffler, an anthropologist who had done field work in the Hill Tracts from 1955-57, and again in 1964, describes the environmental degradation that has occurred since then:

“The sight I referred to are bare hills devoid of larger tree or any bamboo, so urgently needed in the local economy - quite a contrast to the luxuriant green cover I had seen thirty years ago. From places where the road crosses a hill, one can see that these bare hills stretch far into the interior. My first idea that this deplorable state might be the result of reckless *jhuming* was soon thrown into doubt when I saw hill people slashing the meagre remnants of vegetation and burning the hill sides (a *jum* field would have to be burned by the beginning of April, but not by the end of January). In some cases at least this “jungle clearing” as it is called, may be covered by the Food for Work program, paid by USAID - imported food for work that has the inevitable effect of making barren and unsuitable for productive use the very hills on which, formerly, the hill farmers produced all they needed for making a living: paddy, vegetables, fruits, cotton, bamboo, wood etc. Only an insane mind could have put these hill people to work for the wilful destruction of this land, the very basis of their traditional life. And really nobody could be interested in this sterilisation, given the quest for fertile land all over Bangladesh.¹¹⁷”

Traditionally, the hill people have never had to question their right

to the hills and forests in their area, and have managed the resources according to their customs and practices. The village authorities were responsible for the overall use and management of the forests and their produce, including their conservation and regeneration. Mindful of the vital role that forests and their produce play in their own economic sustainability, the indigenous people devised mechanisms and modalities to preserve and protect their resource base according to the precepts of equity and responsibility.

The following are three concrete examples of indigenous knowledge systems of resource conservation and protection in the Hill Tracts:

Common Village Forests

According to customary practice, each village identified an area within its territorial and jurisdictional authority reserved solely for use and extraction relating to domestic purposes. This forest is communally owned and managed, with the community as a whole responsible for its upkeep and conservation; *jums* are not allowed in these areas. Use and extraction was need-based with each person taking only what was required, in order not to deplete the natural resources of this forest which existed for the benefit of the entire community. This area was later known as the *mauza reserve* or *service forests* (Regulation 1 of 1900) with the indigenous village administration responsible for its care and upkeep (Rule 41A of the Manual). This system continues today in a few villages. In some cases it is the only remaining natural forest in the surrounding area.

The Jum Cycle

The traditional swidden system of cultivation is cyclical in nature. Initially, once a hillside has been cleared for a *jum*, then it is burned in order to increase its potential; the ash acts as fertiliser (the reason for its also being known as “slash and burn” cultivation). The area is then sown with a variety of seeds including rice, millet, corn and legumes. Once the crops have been harvested, the *jum* area is left fallow to allow the soil to regain its fertility.

The regenerative period may range from three to as much as 20 years. Certain *jum* areas are thus temporarily protected in order to conserve the quality of the soil nutrients, and their cultivation is prohibited during the regenerative period. This alternating cycle of cultivation/

regeneration-conservation has been the major component of the sustainability of the *juming* system and contributed towards its viability as an environmentally friendly farming system.

The Tanga or Taungya System

Another widespread practice of the indigenous people contributing to afforestation and reforestation is the *Tanga* and *Taungya* system, which is “a modified form of *juming*”.¹¹⁸ After burning the *jum* area, timber and other trees are planted simultaneously with the traditional food crops.

This system has been utilised by the Forest Department to increase its revenue within the Protected Forests. The indigenous farmers are recruited as forest villagers and paid a standard salary with the headman as the liaison officer between the villagers and the forest department.¹¹⁹ The *jumias* are only allowed to harvest the standing crops, while the trees remain the property of the Bangladesh Forest Department (BFD). Once the marketable timber has been removed (generally by the Forest Department), the indigenous people are once again allowed to cultivate the area following the *taungya* method. The cycle is therefore the following:

“The *jhumias* tend the trees for one year, harvest their food crops which are inter-grown with the trees and the next year, when the tree saplings are too large and give too much shade for most food crops, they move on to the next area from which the merchantable timber has been removed.”¹²⁰

This is one example of co-operation between the indigenous farmers and the Forest Department. However, although it is mutually beneficial for a limited period, it also facilitates the exploitation of the indigenous peoples by the Forest Department.

Although the authorities had declared that in some cases these plantations would be handed over to the indigenous people, this has not occurred.¹²¹ On the contrary, some of them have been included within the confines of reserve forests.¹²²

The Concept of Government Forests

The first external administration in the Hill Tracts, the British, initiated a procedure between 1875 to 1882 whereby the forests and their resources were declared off-limits to the indigenous people. This was done by

simply declaring forests as “reserve forests” (by notification, order or other executive decision). The indigenous peoples no longer had any rights to these forests, which became the sole property of Government. The term “Government Forests” is also used to describe these forests.

This forest policy was adhered to by successive governments and in the 1960s, another concept, that of “protected forest” was introduced. This system of forest regulation continues to be in force, and, as mentioned earlier, there are at present three categories of forest in the Chittagong Hill Tracts as per national legislation:

- I Reserve Forests;
- II Protected Forests; and
- III Unclassed State Forest.

Each category of forest is subject to a specific juridical regime, and specific rules and regulations apply depending on the classification of the area. Once designated as a government forest, it comes under the supervisory jurisdiction of the Forest Department, which monitors compliance of the relevant rules and regulations in that area. The indigenous people are prohibited from enjoying their customary rights to *juming*, hunting and gathering in the Reserve Forests and can do so in a restricted manner within the Protected Forests.

Unclassed State Forest are those areas which are not under the domain of either Reserve or Protected forests. However, what successive administrations classify as Unclassed State Forest are the common lands of the indigenous peoples, within the *mauza* areas. It is the headman who regulates the use, extraction and rotation of the *jum* areas (also see under the section “Land Laws”). Traditionally, the indigenous people had the unfettered right to these lands, continuously from time immemorial.

The Forest Act was enacted in 1927 and provides the enabling framework for this process. It remains in force today. The principal objective of creating government forests is to set aside the forests and their resources for the exclusive use, extraction and exploitation by the national administration. Since its introduction in 1872, this process of creating government forests has been instrumental in eroding the rights of the indigenous people to their lands and resources.

The first Reserve Forest was demarcated as the Maini and Kassalong Reserved Forest in 1875. “Sitapahar Reserve was further extended and the Reinkhyong Valley turned into a new Reserve. The total area of Reserve Forests in 1884 was 1,345 sq. miles.....” including the Sangu

and the Matamuri Reserves in the southern Hill Tracts.

The broad-based objectives of scientific management of the forests are enumerated as:

- “1) To provide sufficient forest cover in the upper catchment areas in order to conserve and improve the region.
- 2) To prevent denudation of the hills, erosion of the soil, the silting up of the river beds and the Kaptai lake.
- 3) To provide employment to the local people.
- 4) To have a sustained supply of timber, fuel, other forest produce and industrial raw-materials.
- 5) To provide for gradual improvement of the forest with the aim of having a normal forest, sustained yield and maximum financial return.”¹²³

According to information in the *Report on Forestry Sector*¹²⁴, the percentage of the different forest categories of the total Chittagong Hill Tracts area of 3.260 million acres are as follows:

Reserve Forests	24 %
Protected Forests	1 %
Unclassed State Forests	75 %
Total	100 %

Present state afforestation policy is outlined in various documents including the Forestal Report of 1964-66, the 1979 Forest Policy and the Forestry Master Plan of 1993. According to the national forest policy of 1979, government forests “shall not be used for any purpose other than forestry.”¹²⁵ Yet, the Chittagong Hill Tracts forests supply the raw materials for state enterprises including railways and other industries.¹²⁶

The systematic application of this process, initiated over a century ago, continues today, and as recently as 1992, the Government decided to create one such Reserve Forest (Bangladesh Gazette Notification of 21

May 1992). This will immediately curtail the rights of the indigenous people to this area, including their right to live there. Despite protests from the indigenous people,¹²⁷ the implementation of the above order was initiated. At present, although the matter has reportedly been put temporarily in abeyance, the actual order has yet to be revoked.

This is one example of the arbitrary manner of the implementation of this policy approach. There have been no measures to involve indigenous people in drafting the law and the policy framework. From the very beginning of British rule to this day, the indigenous people of the Hill Tracts and their representatives, both traditional and elected, have had little input into, and have been totally excluded from, the use, control and management of these forests. The end result for the indigenous peoples is impoverishment and criminalization.

Plantations

Another measure to increase the financial viability of the forests was to clear some of the natural forests and plant teak, a species imported from Burma (Myanmar). The first known teak plantation was in Sitapahar, Rangamati in 1871.¹²⁸ One of the major impacts of these plantations is the damage to the topsoil and the ecosystem and the loss of biodiversity in the region. The destruction of the natural forests has resulted in the permanent loss of a variety of indigenous plants and animal species,¹²⁹ and in severe soil erosions in these plantations,¹³⁰ a fact acknowledged by the Government in 1971:

“The main timber forests are worked on clear-felling system... Clear-felling system enables us to replace these useless subsidiary species with more useful and valuable species in the quickest possible time and in the easiest possible manner... The most important species that is now being raised in the plantation is teak.... But unfortunately, teak is a very exacting species. It taxes the soil too much and, in addition, pure plantations of teak is also liable to be attacked by teak defoliators and teak-canker insects. Teak, being a deciduous species, it also increases fire hazard.”¹³¹

Logging

The indigenous people of the Hill Tracts have been suffering the devastating effects of indiscriminate logging for years now, ever since the British introduced the policy of creating Reserve Forests, thereby in-

fringing on their traditional rights to the lands and resources of the Chittagong Hill Tracts. The land and the forests are their sole economic and development resource, and the relationship between the forests and the indigenous people has been fundamental to their existence. Yet this is threatened by the extractive activities, namely logging operations, of both state and private enterprises:

State Enterprises/Industries

The priority of the Government in demarcating Reserve Forests is primarily commercial. The number of industries and commercial enterprises established in the Chittagong Hill Tracts which are based entirely on the natural resources, and in particular forest products, is indicative of the lucrative nature of the Government's continued policy of taking the natural forests under its direct control and management. Although ostensibly a forest conservation measure, the fact that the Government does not hesitate to utilise such resources while prohibiting the indigenous people from doing so is neither just nor equitable.

The Karnaphuli Paper Mill was established in 1953 to produce printing and writing papers from bamboo, which was later expanded to include the production of rayon and cellophane. In 1960, the Bangladesh (then East Pakistan) Forest Industries Development Corporation was formed. It is a state corporation responsible for the extraction of timber, firewood and bamboo from the forests, and the processing and sale of forest produce.¹³²

With improved water and road connections in and from the Hill Tracts, logging activities have also markedly increased. The BFD has been engaged in extensive extractive activities with the end result being the denudation commented on earlier. What is of greater concern is that extraction has now expanded to the remaining virgin natural forests and if no measures are taken to re-forest the area, a wealth of diverse flora and fauna will be irretrievably lost.¹³³

Illegal Logging Operations

In addition to the Government's extractive activities in the Hill Tracts, organized gangs of black marketeers operate from the nearby port city of Chittagong and other areas. They finance and manage large logging operations in the Reserve Forests, in collaboration with Forest Department officials and the local police force. It is a matter of record

that these state officials collaborate with the illegal loggers for their financial gain, and this is highlighted by the fact that the check posts on the only accessible waterways and roads through which the timber is exported, are under the supervision of these same officials. In addition, all logs exported from the Chittagong Hill Tracts have to be marked in a specific manner in order to be marketable, and it is the BFD officials who are responsible for controlling this procedure. The following is a description of the process, including its financial elements:

“Forest Revenue.- This is derived by taxing the removal of forest produce from the Government reserves, and also from the open forest, if removed from the district for the purpose of trade.

Toll stations are placed on the rivers at the entry into the Hill Tracts, and as the produce is floated down the rivers it is taxed before being allowed to pass the toll-station. These stations are officered by the Forest Department....In addition, there is doubtless a great amount of forest produce that is removed by the shoulder, but this is very difficult of detection owing to the extreme length of border that requires to be patrolled. I have little doubt that the revenue derived from the forests would be doubled were it possible to realize the proper tax on all forest produce that leaves the Hill Tracts.”¹³⁴

The same process remains in place with some slight alterations, such as an expansion of the roads and waterways, and the use of mechanised transportation, which have increased the export facilities for forest produce from the Hill Tracts. The Chittagong Hill Tracts Commission noted the following:

“On the one hand the government sets up the afforestation programmes to plant new trees, but on the other hand timber merchants are granted permits to cut vast amounts of timber for commercial purposes. A hill man commented: ‘Ecology is destroyed by the government itself. Thousands of permits are being issued for timber and bamboo in the Chittagong Hill Tracts.’”¹³⁵

Impact of State Forest Policies

The forestry policy implemented in the Chittagong Hill Tracts highlights a systematic pattern of violations of the traditional land and resource rights of indigenous peoples. There is significant lack of mechanisms or of any other measures available with which to consult the people charged with the decision making process of formulating or of

applying forest policy. Nor is it possible to involve them in its implementation. The majority of the indigenous people, many of whom are engaged in subsistence-based activities, are dependent on the forests and their produce for their economic well-being. The national afforestation policy has thus had a major impact on the basic social, cultural and economic rights of the indigenous peoples, as summarised below:

1. Loss of lands and resource-base. As can be seen from the available data the procedure for creating Reserve Forests includes a concomitant loss of land and related resource rights for the hill people. With each successive administration they have seen their traditional lands steadily converted into national forests under juridical regimes in which no consideration is given to their needs, or to their ancestral rights to the forests and their produce. Many of these rights are recognized in Regulation 1 of 1900, such as the right to cut sun grass, the right to homestead land, the right to *jum*, and to graze cattle.

No compensation is paid to the indigenous peoples for the loss of their traditional lands although relevant case law indicates that it is illegal to establish a Reserved Forest on land for which rent has been paid.¹³⁶ Many of the lands included within the Reserve Forests are *jum* lands, for which the indigenous farmers pay an annual tax (Rule 42). Yet once the notification of the decision to create a government forest is published, steps are taken to establish it including the removal of the indigenous people from their lands.

There has been a considerable decrease in area of land remaining open and accessible to indigenous people to eke out a living. This is a factor in their increasing impoverishment. What is of greater concern is that this process, initiated in 1875, continues to be practised today.

2. Curtailment of subsistence economic activities. Within the Reserve Forests any use or extraction of forest produce is prohibited, while within the Protected Forests such activities are restricted, except in the case of the Forest Department itself which can sell the produce or market it after processing.

The majority of the indigenous people are subsistence farmers, engaged in subsidiary hunting and gathering of forest products. Their principal source of livelihood is the land and its resources.¹³⁷ With no measures taken or envisaged to facilitate a transition to a market oriented economy, the indigenous farmers are experiencing difficulties in seeking alternative avenues for income generation. If the present policy of converting the communally owned forests of the Hill Tracts into

extraction areas for the government's sole use and enrichment continues, the economic destruction of the indigenous people is inevitable.

3. *Re-entry into Reserve Forests.* Although the use of and extraction from the forest and its resources is prohibited in the Reserve Forests, and is in fact penalised, the indigenous people have no alternative but to enter these forests for use and extraction to meet their domestic requirements, and in some cases for commercial purposes too. In 1976 an Asian Development Bank-funded study on the Chittagong Hill Tracts forests estimated that 65% of the Reinkhyong Reserve had been destroyed by *jumias* coming into the area: "They have been forced to do so because of the reduced *jum* cycle and increased pressure for land in the Unclassed State Forest."¹³⁸

To give an example, some *jumia* families living in the area surrounding the Reinkhyong Reserve Forest entered the area in the 1960s, but were forcibly evicted in 1970-71 by the East Pakistan Rifles, a para-military force. No relocation arrangements were made to resettle these families. Subsequently, many *jumia* families, having no other alternative, re-entered the forest.

4. *Displacement.* The public notification of a forest area as reserved, effectively displaces the indigenous inhabitants living within the area. As mentioned earlier, as recently as 1992 the decision to create another 'Reserve Forest' met with strong criticism both locally and internationally, in particular regarding the displacement of the people living within the area.¹³⁹

As a matter of general practice, there are no measures available to allocate alternative lands to the displaced families. As a result of this practice of creating government forests, hundreds of indigenous people have been, and still are, internally displaced. With little or no access to the forests and their resources, many indigenous people are now homeless, in addition to having no resource base for their economic activities. Many of the internally displaced people are among the indigent members of society, with a standard of living well below the poverty line, even by local standards.

5. *Criminalization.* The gravest impact of creating Reserve and Protected Forests is to criminalize the principal economic activities of the indigenous people living in such areas. Traditional activities such as gathering sun grass for a thatched roof, trapping or hunting, and *jum-ing* are now categorised as crimes within the Reserve Forests, or are subjected to stringent controls in the Protected Forests.

Recent reports from the Hill Tracts confirm that contravention of the Forest Acts is the charge most often brought against indigenous people by the officials of the Forest Department and the police.¹⁴⁰ However, inquiries among the local people indicate that this is a systematic procedure to financially exploit the indigenous people; the legal proceedings are discontinued on the payment of a bribe to the concerned officials.

This policy of restricting the access and extraction rights of indigenous peoples to their traditional lands including forests, is also applied in many other countries including India, Malaysia and Sri Lanka.

3. The Hydroelectric Project (1959-63)

A hydro-electric power plant was constructed in the Chittagong Hill Tracts between 1959 and 1963. The Karnaphuli river was dammed and the reservoir it created occupied some 256 square miles.¹⁴¹ It had the distinction of being one of the largest man-made lakes in the world at the time.

The dam submerged 54,000 acres of agricultural land in the Chittagong Hill Tracts - which amounted to approximately 40% of land suitable for intensive/plough cultivation. These lands formed the majority of the rice-fields in the area, rice being the staple diet of the hill people. In addition to the material damage of losing their farms and their homes, the dam displaced more than 100,000 indigenous people who were forced to evacuate the designated area. As reported in official Government records:

“According to the survey undertaken by the Rehabilitation Officer, about 10,000 ploughing families having land in the reservoir bed and 8,000 landless *jumia* families comprising more than one lakh¹⁴² people were displaced. The reservoir submerged a vast area comprising 125 *mouzas*,.....The inundation threw over 54,000 acres of plough land out of cultivation. This area constitutes 40 per cent of the total settled cultivable land of the district. The fertile valleys of the district, *viz.*, Karnafuli, Chengi, Kassalong and Maini have been inundated.”¹⁴³

Although indigenous leaders raised strong objections to the dam, they were informed that it was necessary for the development of the plains areas.¹⁴⁴ There were no consultative or participatory measures to involve the indigenous people in the project at any stage of formulation or implementation. An alternative site was proposed further upriver

which would have caused less damage to the indigenous people, but this was rejected as being too near the international border with India, and therefore politically sensitive.

Completed in 1963 at a cost of Rs. 4.9 crores¹⁴⁵, with funding from the US development agency - USAID - the Kaptai power plant supplied electricity to the plains districts, mainly to the port city of Chittagong. There were no arrangements to provide electricity to indigenous homes, or for them to derive any benefit from this huge development project, yet their loss in terms of emotional and economic impact is incalculable. As a result of the loss of their ancestral lands, some 40,000 Chakmas migrated to Arunachal Pradesh in India, and remain stateless up to this day.¹⁴⁶

The construction of this dam in the Chittagong Hill Tracts was similar in its impact to the construction of large dams in many other indigenous areas, e.g. the Alta/Kautokeino Hydroelectric project in northern Norway, the Sardar Sarovar Hydroelectric Project in India and the James Bay project in Canada to name but a few. Invariably these dams are always constructed in indigenous areas:

“The isolated, marginal areas often occupied by indigenous peoples constitute the last great and until recently unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to implement strategies to “incorporate” these areas into the national and international economy. In the process, indigenous and tribal peoples have suffered genocide and ethnocide.”¹⁴⁷

The Independent Commission on International Humanitarian Issues has condemned dams for their effects on indigenous peoples:

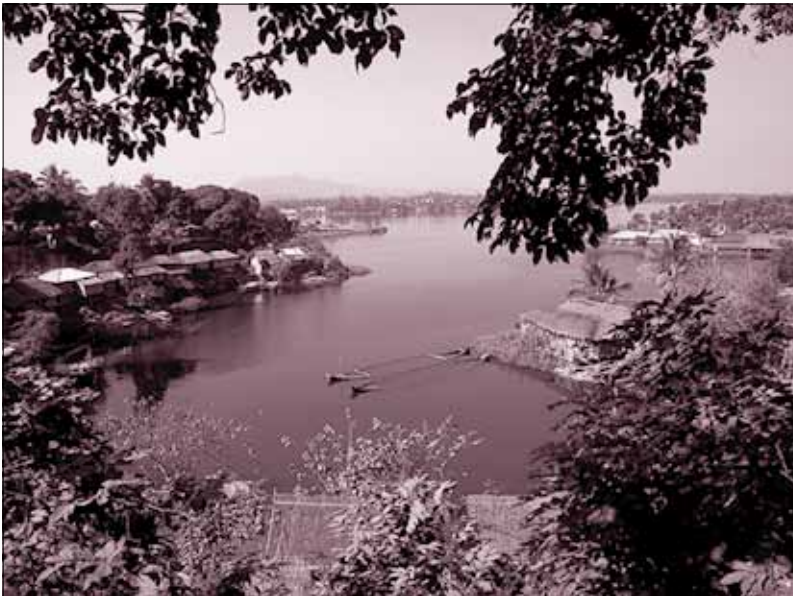
“[L]arge dams are disastrous for indigenous peoples. They destroy their economies and habitats, disrupt their social systems, and submerge and otherwise desecrate sites of religious or cultural importance. Indigenous communities are dispersed, losing their original cohesion and unity; they are left impoverished, often landless and dispirited.”¹⁴⁸

These kinds of large-scale development projects which have devastating consequences for indigenous peoples, are often implemented without engaging in any prior environmental or social impact assessment processes. Environmental impact assessment studies are becom-



View over the Kaptai Lake from Rangamati Town. (Photo: Christian Erni)

Bengali settlements along the Kaptai Lake in Rangamati Town. (Photo: Christian Erni)



ing standard practice prior to the implementation of development projects and the latest trend is to specify such studies as necessary, e.g. the Philippines. The International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169), which is the most recently adopted international instrument on the subject of indigenous peoples states:

"Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities." (Article 7(3)).

The shift in multilateral lending is towards culturally appropriate development projects devised with the help of prior impact assessment studies, e.g. World Bank Operational Directive No. OD 4.20 on Indigenous Peoples and the draft policy paper of the Asian Development Bank on indigenous peoples (see later).

Resettlement and Rehabilitation

The Government set up a rehabilitation office to facilitate the transition, but the results achieved were poor. Both in terms of quality and quantity the land provided for the displaced families was insufficient. In addition, the measures to provide adequate financial and technical assistance to enable the affected people to seek alternative avenues of employment, or to establish new income-generating ventures were carelessly administered, and ineffective:

"The Government had hoped to replace as much plowland as was lost, but it did not earnestly pursue this aim. It seemed unaware of the shock to Chakma society that the drastic uprooting from the submergence might entail. A false picture of the "migratory hill tribes," engaged in the "pernicious practice" of *jum*, contributed to a distorted view of the problem. Forest Department officials were particularly uncompromising in holding on to Reserved Forest land that might be used for *jum*.... The Revenue Department's 1959 memorandum estimated that the Kassalong area contained 13,000 acres of "flat land suitable for cultivation." This figure was subsequently revised to 10,000 acres. But in 1960, with 8700 acres allotted on paper and most of the population moved in, even this amount of flat land could not be found.... The Reve-

nue Department could have averted this contretemps altogether. The Hill Tracts had been surveyed by aerial photography in 1952 so that the Survey of Pakistan, an agency of the Central Government, could prepare large-scale maps of the reservoir area....

Relocation authorities even ignored the evidence of the extant reservoir maps. In parts of the "rehabilitation area," land was allotted that was shown as being below the high water mark of the reservoir. The hillmen obliged to settle there had to clear thick forest and build houses while being advised that they might have to move to higher ground later on. Finally, the hillmen were greatly disturbed by the rumour that the reservoir might later be considerably enlarged by the further heightening of the dam."¹⁴⁹

The salient features of measures taken to allocate lands to the indigenous peoples and to compensate them for the lands they had lost were the following:

Land Allocation

The following information indicates the land allocated to the indigenous families under the provisions of the resettlement programme:¹⁵⁰

- a) The total amount of land submerged was 54,000 acres of all purpose agricultural lands (also called plough lands due to their suitability for intensive cultivation). Yet the amount of land allocated under the re-settlement scheme was 20,000 acres of inferior quality lands, i.e. flat lands, which were unsuitable for all purpose agriculture;
- b) Thus the net loss to the indigenous farmers was 34,000 acres of land, in addition to the loss in the soil quality which also signified a reduction in the total crop yield;
- c) 10,000 families who had lost their agricultural lands were allocated 20,000 acres of hillside lands unsuitable for plough cultivation leading to irregular annual cultivation;
- d) 8,000 *jumiya* families did not have any lands allocated to them as the Government did not recognize their customary rights to their *jum* lands;
- e) The average land holding of each family prior to displacement was estimated to be 6 acres. Yet, after completion of the project, each family was provided with approximately 2 acres. Thus the net loss

per family was approximately 4 acres.

Financial Compensation

An estimated sum of \$59 million was allocated for compensation purposes, of which available information indicates that US\$2.6 million was provided to the rehabilitation office.¹⁵¹ However, many indigenous families did not receive any compensation for the lands they had lost.

The inherent cultural and linguistic differences between the rehabilitation officers, who were from other areas of the country, and the displaced indigenous people were manifold and this contributed to the general inefficiency of the whole programme. There were no translation facilities, and no efforts were made to ensure the displaced farmers understood the nature of the transaction they were agreeing to, and in many cases formally putting their signature marks to. There are many reports of the hill people receiving only a part of what they were entitled to, and that this was paid in small amounts thus increasing the difficulties in consolidating alternative income generating enterprise/schemes.

Impact on Land Rights

Of the 100,000 people displaced, Government records indicate that 10,000 families owned plough lands and 8,000 were *jumia* families. Their positions will be analysed separately in order to highlight the legal framework:

Plough Lands

As described earlier, the plough lands are the agricultural lands which have been settled, i.e. the owners have ownership, possession, and title. This is also acknowledged in Government records which describe these landowners as "having permanent rights to land in the reservoir bed". The average land holding of the plough lands was generally six acres, yet "these displaced families could be provided with hardly two acres of land on average in the new settlements in the non-submerged and de-reserved areas."¹⁵²

The plough land owning families never received adequate compensation for the loss of their lands, and the alternative lands were of inferior quality (see above table). Many of these displaced families had little opportunity to access alternative income generating activities,

and many remain landless and impoverished even today (see Case Studies for details).

Jum Lands

With respect to the 8,000 or so displaced families who owned and cultivated *jum* lands, the Government refused to recognize their rights to the *jum* lands they were cultivating and categorised them as “landless”, with no rights to either land allocation or financial compensation for the loss of their lands.

However, these rights are traditional rights in land and according to customary law in the Hill Tracts, these families had possessory title to their homes as well as ownership for cultivation purposes. They also paid taxes which were duly recorded in the indigenous land rights register as well as in government records (as mentioned earlier each year the Rajas offices sent the Deputy Commissioner the *jum tauzis* i.e. rent rolls with details of the *jums* including the names and other particulars of the *jumiya*).

As such these families were all taxpaying members of an agricultural society. In addition, as *jum* cultivators they had both individual and collective rights to their *jum* lands, together with the indigenous members of their community, in addition to having ownership and possession to their plot of *jum* land. To state that they were landless is inaccurate, and a denial of their rights to their ancestral lands.

The *jumia* families did not receive any compensation for the loss of their *jum* lands. A large number of the displaced *jumia* families went across the border to India, where they remain to this day without citizenship and stateless. Those that remained were unable to regain their economic viability, and are among the poorest segment of indigenous society today.

Impact Assessment

At the time of the construction of the dam, prior impact assessment studies were non-existent, and had not entered the social consciousness as intrinsically as they have today.¹⁵³ Given the present awareness of today’s cost benefit analysis which is becoming a standard feature of any development project, the situation of the indigenous people in the Hill Tracts remained unknown and unassessed. In addition, at

that time, in the late 1950s, there were no such measures envisaged or required for any projects.

Although the Kaptai Hydroelectric Project provided a number of benefits to the country as a whole, such as electricity, employment opportunities, fisheries, and an improved water transportation system, the benefits to the indigenous people were minimal. In practical terms, out of a total number of 100,000 displaced people less than 0.1 % had access to electricity, and in terms of employment, less than 1% of indigenous people were employed either directly or indirectly by the Project. The recruitment practices are reported to have been discriminatory against the indigenous people.

An informal impact assessment survey conducted in 1979 among the people displaced by the dam reported the following:

- 89 % were displaced by the inundation of their homes and land;
- 87 % had faced difficulties in building new homes;
- 69 % had received insufficient compensation attributable to the corruption of government officials;
- 78 % did not have any employment opportunities in the hydro-electric project;
- 69 % felt their present food and economic crisis was caused by the Kaptai dam;
- 93 % felt their general economic condition had deteriorated as a result of the Dam, and believed that their standard of living and overall situation had been much better prior to the Kaptai dam...¹⁵⁴

The people displaced by the dam have never been in a position to regain their former economic viability and are also among those dispossessed a second time by the plains settlers brought into the Hill Tracts by the Government.¹⁵⁵

The Forestal Report

In 1964, in the aftermath of the Kaptai Dam, the Government engaged a Canadian company - the Forestal Forestry and Engineering International Limited - to study the soil and topography of the Hill Tracts. A 16 member team of experts composed of geologists, soil scientists, biologists, foresters, economists, and agricultural engineers studied the terrain for two years. The principal objective was that this would serve as the basis for a more development oriented approach to land

utilisation in the Hill Tracts.

The report of Forestal Forestry and Engineering International Limited (Forestal for short) was based on extensive field research including the use of helicopters, aerial photographs and electronic computers. The team found that the rate of population growth in the Hill Tracts exceeded the land capacity. The high incidence of steep slopes and other natural characteristics made the soil condition of the Chittagong Hill Tracts poor and inadequate as a resource base for its inhabitants.¹⁵⁶ The Forestal experts graded the soil according to its condition.¹⁵⁷

Category	Land use	% of land mass and acreage	
Class A	all-purpose agriculture (plough cultivation)	3.2%	104,304.64 acres (30,586 hectares)
Class B	partly for terraced agriculture/partly for fruit gardening (horticulture)	2.9 %	94,526.08 acres (27,148 hectares)
Class C	horticulture/afforestation	15.5%	5 0 5 , 2 2 5 . 6 0 acres (146,649 hectares)
Class C-D	ideal for afforestation horticulture after terracing the slopes	1.4%	45,633.28 acres (12,810 hectares)
Class D	suitable only for afforestation	77%	2,509,830.40 acres (726,797 hectares)

Taking into account the poor soil conditions - due mainly to erosion - and the small quantity of land suitable for all purpose agriculture i.e. 3.2%, the Forestal experts concluded that the best manner of land-use for the majority of the land - over 77 % - was afforestation: "The research team decided that the hill tribes should allow their land to be used primarily for the production of forest produce for the benefit of the national economy because it was not well suited for large-scale cash cropping. The report left no alternative to the tribal peoples."¹⁵⁸

The conclusions of this company, known as the Forestal Report, signified a marked change in the government's policies and programmes to develop the area:

“What they proposed as a result of their research (Forestal Report 1966) has formed the basis of most of the government plans for development of the Chittagong Hill Tracts in the following years. But the government made some seemingly minor changes in this plan, and these changes (omissions and additions) proved fatal....Their recommendations centred on horticulture which the experts thought would bring hitherto unknown prosperity to the inhabitants now under danger of pauperisation, provided only some provisions were taken. One of these was that a family turning from subsistence oriented swidden cultivation to market oriented horticulture should be provided with at least 10 if not 20 acres for planting cash-crops. The government “experts” turned these figures down to 5 acres.”¹⁵⁹

The measures undertaken by the Government on the basis of the For-estal Report may be summarised as follows:

1. The Chittagong Hill Tracts Development Project

A 1918 government-commissioned study on the administration of the Chittagong Hill Tracts came to the following conclusion:

“It is not possible to understand the economic development of the Hill Tracts, unless the fallacy that the cultivation of hill-sides by jumung must be abolished, is dispelled.... It is not possible to estimate the area still available for plough cultivation, but it is certain that it alone would not be sufficient to support the mass of the jumia population.... It must be accepted that jumung will continue, and that the greater portion of the population must be supported by hill-side cultivation.”¹⁶⁰

The Chittagong Hill Tracts Development Project was established in 1969 and the East Pakistan Agriculture Development Corporation (EPADC)¹⁶¹ had the responsibility for initiating a horticultural programme in the area.¹⁶² This programme had partial success only due to various factors including poor soil quality, unfavourable credit and market facilities, corrupt middlemen and unfair trading practices such as pricing cartels etc. This resulted in many of the indigenous farmers eventually going bankrupt.¹⁶³

In 1973, the Chittagong Hill Tracts Development Project was transferred from BADC (ex-EPADC) to a central agency, the Horticulture

Development Board, which was unable to provide the financial and technical assistance required to turn the already flagging project into a lucrative venture. The farmers had to seek alternative income support opportunities, and many were once more faced with no other alternative but to turn to subsistence oriented cultivation (*juming*). However, they faced a two-fold problem:

- 1) Lack of available land therefore resulting in encroachments on forests designated as state-owned;
- 2) The legal ramifications of engaging in this practice - restricted in the Protected Forests, and prohibited in the Reserve Forests.

In the long term analysis, this attempt to incorporate a market economy in the Hill Tracts as an alternative to the existing subsistence economy approach did not yield favourable results. It did not provide the indigenous people with a steady source of income, nor an alternative food supply as their traditional occupations had done. Shortly afterwards, there were reports of food shortages and the first cases of starvation.¹⁶⁴ Ultimately, most of the gardens were abandoned, and the government turned its attention to the second alternative recommended by the Forestal report, namely forestry. (See above.)

2. Reduction of Landholdings

Another recommendation of the Forestal Report was to fix a limit on the size of land holdings to 5 acres or more. In 1971 the Government introduced an amendment to *Rule 34* of the Chittagong Hill Tracts Manual thereby reducing the area of land to be settled by the Deputy Commissioner of the Hill Tracts from 25 to 5 acres for a single family of hillmen or non-hillmen residents¹⁶⁵ - and "*in a deserving case*" up to 100 acres. This amendment also reiterated the provision in the Regulation restricting outsiders from settling in the Chittagong Hill Tracts:

"No settlement of land in this district shall be made with outsiders without the prior approval of the Board of Revenue" (Rule 34(1)).

The Board of Revenue is the highest policy making body on Chittagong Hill Tracts land administration. A non-hillman resident was identified as "*a person who has house in the district of Chittagong Hill Tracts for at least 15 years and no house outside that district, or has a house in the district of Chittagong Hill Tracts with agricultural land settled by the Deputy Commissioner of that district without any house or agricultural land*

outside that district."

Taking into account the population to land ratio at the time, the following mathematical equation indicates the amount of land available per family:

1. Population of Chittagong Hill Tracts (1974 census)	508,199 persons
2. Number of families (if one takes an average of 5 persons per family)	101,639 families
3. Land suitable for horticulture (Class B and 1/2 of C/C-D)	370,000 acres
Total allocation per family	3.64 acres ¹⁶⁶

Using this as the basis, it is clear that the standard land holding of each family was limited to 3.64 acres, and did not meet the government-assessed minimum of 5 acres, which is insufficient to meet the needs of a farming family:

"Local experience has shown that 5 acres of hillside land per family is barely enough only for subsistence, on an average. In any case, even within this category, a huge area of land would not be available for cultivation because it was already under occupation or was common forest land or was situated too far from motorable roads or navigable waterways to make them feasible for commercial fruit gardening. Thus the lot of the Chittagong Hill Tracts farmers consequently turned from bad to worse."¹⁶⁷

However, there were exceptions to this minimum allocation of 5 acres:

- 1) The Deputy Commissioner could settle upto 25 acres of "land for rubber plantation and other plantation on commercial basis" and the Commissioner up to 100 acres (Rule 34 (b)(I)).
- 2) In addition, "land up to 10 acres outside urban areas and up to 5 acres within urban areas may be settled by the Deputy Commissioner with a deserving industrialist on long term lease for establishment of industrial plants." (Rule 34 (c) (I)).

106 | Needless to say, there are few indigenous plantation owners and de-

servicing industrialists, and it was once again the financially solvent plains people who benefited from this measure.

As a result of the Kaptai Dam, the situation of the indigenous people deteriorated, and they have not been able to recover from the effects of this man-made disaster, either socially or economically. From their point of view, the damages sustained far outweigh any benefits gained and to this day many are quick to point to the dam as heralding the beginning of their socio-economic downfall.

4. Population Transfer Programme (1979-84)

The next major upheaval the indigenous people of the Chittagong Hill Tracts had to face was a Government plan to resettle hundreds of thousands of landless plains families in their area between 1979 and 1984. This programme of population transfer has resulted in transforming the indigenous people into landless labourers without a land or resource base for their subsistence activities. In addition their religion and their culture is threatened, and the situation is one of ethnic conflict in the Chittagong Hill Tracts.

Migration from the plains areas was a constant threat to maintaining the separate identity of the indigenous peoples and their area. In 1947, during the partition of India and Pakistan, the Radcliffe Commission decided to award the Chittagong Hill Tracts to Pakistan, and not to India, for the following reason:

“The Chittagong Hill Tracts were sadly unique in being the only non-Islamic, non-Bengali, non-wet-rice-growing and low-population-density district in an overwhelmingly Muslim Bengali environment, in which old population expansion trends had accelerated dangerously and were now somewhat confined in several directions by new international boundaries.”¹⁶⁸

Initially an autonomous area, the entry and settlement of non-indigenous persons to the Hill Tracts was systematically facilitated, culminating in 1979 with an amendment to Rule 34 of the 1900 Regulations to expand the criteria for eligibility for land settlement and ownership in the Hill Tracts to “deserving persons”.¹⁶⁹

The following is a chronological analysis of the principal arrangements effected to accommodate non-indigenous settlement in the Hill Tracts:

Up to 1713. There is very little documentation on the early history of the Chittagong Hill Tracts. However, there is evidence of the mention of a place known as *Chacomas* in the central Chittagong Hill Tracts, probably referring to the land inhabited by the Chakmas, in the 1550s where a Burmese king claims himself to be the “highest and most powerful king of Arrakan, of Tippera, of Chacomas, and of Bengala;”¹⁷⁰ moreover, one of the earliest maps of Bengal (circa 1550) shows Chacomas on the banks of the river Karnaphuli near Chittagong, Arrakan and Tripura.¹⁷¹

1713-1777. The Chittagong Hill Tracts was divided into the two large territories of the Chakma Raja and Bohmonggri which were inhabited largely - but not exclusively - by the Chakma and Marma peoples. The more inaccessible areas of the Chittagong Hill Tracts - especially the higher ridges in the north-east and south-east - were occupied by numerous small chieftaincies of the Pangkho and other traditionally ridge-dwelling peoples. Only indigenous people lived in the Chittagong Hill Tracts and no plains people entered or lived there at that time.

Until 1860. In the 1770s, after the British Government took over the administration of Bengal and other possessions of the East India Company in India, it started a military campaign to subjugate the Chakmas who refused to accept the encroachment of plains people into their territory. Although never militarily defeated, the Chakmas were forced to agree to a treaty, accepting a tributary relationship with the British. Soon afterwards, the Bohmong’s territory also became a British Tributary.

1860. Transition to a British administered district (Act XXII of 1860). The Hill Tracts was recognized, and demarcated, as an indigenous area. Restrictions on non-indigenous settlement in the area.

1900. Regulation 1 of 1900 enacted. The original Rule 34 stated “All lands held for plough cultivation on lease from the Government under whatever rules they have been or may be granted, are subject to the condition that they cannot be sub-let or transferred, except on hereditary succession or with the consent of the Commissioner.”

Rule 38 of Regulation 1 of 1900 clarifies that “every person residing or cultivating within a circle is subject to the jurisdiction of its Chief, with the exception of Government officers and their families, traders and shop keepers in bazaars, and lessees of fisheries and *garjan kholas*”.

There were no explicit restrictions on outsiders settling in the Hill Tracts as at that time there was a presumption that all the residents of the area were indigenous to it, and paid taxes to the indigenous

administration - the Chiefs, Dewans, and headmen.¹⁷²

1920. Amendment to Rule 34 of 1900 Regulation to state the following: "(1) Leases may be granted only to hillmen.....provided that non-hillmen of the cultivating classes actually resident in a village may be given a lease in that village up to the maximum of 25 acres." Alienation and sub-letting to outsiders was strictly forbidden.¹⁷³

1930. Amendment to Regulation 1 of 1900. No permission required from the Deputy Commissioner for entry to area. Prohibition on land ownership by outsiders continued.

1956. Constitution of Pakistan stipulates the Chittagong Hill Tracts as a wholly Excluded Area.

1964. Constitutional Amendment (Act No. 1 of 1964): Special status of Chittagong Hill Tracts as an indigenous area removed. Non-indigenous people could own land on fulfilling certain criteria.

1971. Amendment to Rule 34 of Regulation 1 of 1900: "(a) (1) The quantity of cultivable or cultivated flat land to be settled for plough cultivation with a single family of hillmen or non-hillmen residents¹⁷⁴ shall be such that added to the quantity of land already in its possession it does not exceed 5 acres." The ceiling for grove land was also five acres, and extended to ten in those cases "where the performance of a lessee is found by the Deputy Commissioner to be highly satisfactory."

However, Rule 34 (l) specified that "No settlement of land in this district shall be made with outsiders without the prior approval of the Board of Revenue." In addition, non-residents of the Hill Tracts were not allowed to inherit any interest in land "except with the express consent of the Deputy Commissioner who shall have regard to the principles of equity and as far as may be to the rights of the plains men which, but for this rule, would be operative." (Rule 34 (13))

1979. Rule 34 of the Regulation 1 of 1900 amended: "Land for residential purposes may be settled by the Deputy Commissioner with *deserving persons* on long term lease basis." Rule 34 (d) (I). There were no longer any restrictions on ownership by and residency of non-indigenous people in the Chittagong Hill Tracts.

The end result of this systematic process of amending the 1900 Regulations, in particular Rule 34, was to gradually remove the restrictions on settlement and ownership of land in the Hill Tracts by non-indigenous persons. By 1979, the legislative framework was in place to allow the

entry and settlement of non-indigenous people in the Chittagong Hill Tracts.

The Settlement Programme¹⁷⁵

In 1979, the President of Bangladesh, Ziaur Rehman convened a meeting of high level officials including the Deputy Prime Minister, the Home Minister, the Commissioner of Chittagong, and the Deputy Commissioner of the Chittagong Hill Tracts. The objective was to formulate a programme of population transfer to relocate families from the plains areas of Bangladesh to the Hill Tracts. An allocation of 60 million takas¹⁷⁶ (the national currency) was earmarked for the programme, and special committees established for its implementation.¹⁷⁷ In order to encourage the plains families to move to the Chittagong Hill Tracts, various incentives in cash and kind were offered. There was also a fixed allocation of land settlement per family as recorded by an official document:

Memo No. 665-C, dated 5 September 1980 from the Commissioner of Chittagong Division:

“It has been decided that landless/river erosion affected people from your district will be settled in the Chittagong Hill Tracts (Chittagong Hill Tracts).

The settlement will be done in selected Zones and each family will be given Khas land free of cost according to the following scale:

Plain land	2.5 acres
Plain and bumpy ¹⁷⁸ mixed	4.0 acres
Hilly land	5.0 acres

It has been decided that you will send 5,000 families.”¹⁷⁹

The official rationale for the Settlement Programme was overcrowding in the plains, and that there was land to spare in the Hill Tracts. This misconception of enormous amounts of available land in the Chittagong Hill Tracts was contrary to official information, including a Government commissioned study in 1967 which reported:

“As far as its developed resources are concerned, the Hill Tracts is as constrained as the most thickly populated districtThe emptiness of the Hill Tracts therefore, is a myth.”¹⁸⁰



*Chakma man in front of his former homestead now occupied by Bengali settlers.
Dighinala Thana, Khagrachari District. (Photo: Christian Erni)*

Bengali settlers in Dighinala Thana, Khagrachari District. (Photo: Christian Erni)



There were no measures taken to include the indigenous people in the decision making, the programme formulation or the implementation of the settlement programme. In addition, no steps were taken to inform them about the specifics of the proposed plan including the decision to provide the settlers with land allotments. Nor was their consent obtained. Not even a minimum effort was made of allowing indigenous people to voice their opinions on the proposed programme or to take the necessary measures to ensure that their prior claims were safeguarded. It is relevant to note that this was despite an existing obligation to consult the traditional indigenous leaders about any important matters:

Rule 39 of the 1900 Regulation: The Deputy Commissioner shall consult the Chiefs on important matters affecting the administration of the Chittagong Hill Tracts. For this purpose a conference shall be held, at least twice a year, under the presidency of the Deputy Commissioner, to which the Chiefs or their representatives shall be invited.

Raja Devasish Roy, the Chakma Chief, publicly confirmed his opposition to the settlement programme: "I do not want settlers from outside the Chittagong Hill Tracts. The headmen are also against it. I have asked the government not to settle Bengalis in the district. Those who settle here are creating conflict with the tribal people... Many are compelled to leave their ancestral homelands, some even going to India."¹⁸¹

Thousands of families from the plains began to arrive in the Hill Tracts in phases and between 1979 and 1984 between 200,000 and 400,000 landless persons were settled in the Hill Tracts, often on land belonging to indigenous people. In an area of 5,098 square miles (approximately the size of Northern Ireland), with an original population of about 600,000 this influx of outside settlers had a major impact.

Demographic Composition of the Chittagong Hill Tracts (1872-1991)

The following table¹⁸² indicates the demographic composition of the Hill Tracts from 1872 to 1991 when the last census was held:

Year (CHT)	Indigenous	%	Non-indigenous	%	T o t a l
1872	61,957	98.26	1,097 ¹⁸³	1.74	63,054
1901	116,000	92.63	8,762	7.37	124,762
1951	261,538	90.92	26,150	9.08	287,688

1974	372,526	73.71	135,673	26.29	508,199
1981	441,774	59.16	304,873	40.93	746,647
1991	501,144	51.42	473,301	48.67	974,445

There was a gradual increase of non-indigenous people into the Hill Tracts through the years, but in 1981, when the settlement programme was underway, a dramatic shift in the demographic composition of the area is noticeable. It is important to take into consideration that in 1947, when the Indian sub-continent was partitioned, indigenous people constituted over 92% of the total population; in 1971 when Bangladesh was created they made up nearly 75%; whereas in 1991 their share was only 51.4% of the total population in their own homeland.¹⁸⁴ However, informal estimates of the present demographic composition indicate the ratio of Jummas to plains people to be approximately 55:45.¹⁸⁵

Although the Government claims to have halted the settlement programme, unofficial sources indicate that families from the plains continue to relocate to the Hill Tracts.

Land Allocation under the Settlement Programme

Between 1979 and 1984, approximately 200,000 to 400,000¹⁸⁶ landless persons were settled in the Hill Tracts. In order to comprehend the complexity of the potential problems inherent in this policy of population transfer, it is necessary to take into account the numerical magnitude of this situation. The following is an informal calculation based on an average family of 5 persons:

- a) Minimum estimate of 40,000 families (200,000÷5)
- b) Maximum estimate of 80,000 families (400,000÷5)

<i>Acres of land required:</i>	<i>Minimum (a)</i>	<i>Maximum (b)</i>
Paddy land	40,000 x 2.5 = 100,000	80,000 x 2.5 = 200,000
Mixed land	40,000 x 4.0 = 160,000	80,000 x 4.0 = 320,000
___Hilly land	40,000 x 5.0 = 200,000	80,000 x 5.0 = 400,000
Total (in acres)	460,000	920,000 ¹⁸⁷

Based on this informal estimate, in order to meet the stated objective of allocating 11.5 acres of paddy, mixed and hilly land to each settler family, the Government required between 460,000 to 920,000 acres of land in the CHT. Where was this land coming from?

The implementation of the population transfer programme continued unabated with a significant absence of measures to take into account the realities of the existing situation. There was information available, as mentioned earlier - including official reports, surveys and other statistical data - which clearly indicated that the amount of land in the Hill Tracts did not meet the subsistence requirements of its original inhabitants. Yet no measures were taken to include the significance of this crucial data when concerning the settlement programme, or its design and implementation. The following indicators are relevant in this regard:

- the Kaptai reservoir had submerged 40% of the agricultural land in the Chittagong Hill Tracts;
- Reserve Forests amounted to approximately 796,160 acres of the total area;
- 77 % of the Chittagong Hill Tracts land was suitable for afforestation; 3.2 % for all purpose cultivation; and the remaining 20 % for terraced agriculture and/or horticulture or afforestation (based on Forestal Report);
- prior to the settlement programme estimates indicated that there was approximately 3.63 acres of land available for each family (see above for details).

It was thus evident that an influx of thousands of plains settlers to the CHT would merely aggravate an already ailing local economy in addition to increasing ethnic tension for scarce resources. However, the settlement programme was implemented with no efforts to include or consult the indigenous peoples concerned.

Impact on Land Rights

The impact of the settlement programme on the land rights of indigenous people was far-reaching, and problematic; a major factor contributing to the prevailing unrest in the Chittagong Hill Tracts. A root cause was the lack of involvement of the indigenous people in the programme design and its implementation. In addition the decision was taken without taking into account the available information regarding the pressure on land and natural resources.

Allocation of land for settler families was given the highest priority, and in 1979 survey officials were observed measuring land, including that occupied by the hill people. With the settlement programme underway, the Government had to find an immediate solution to the lack of available land. As an initial measure, a portion of the Kassalong Reserve Forest near the confluence of the Maini and Kassalong Rivers was “de-reserved” and settled in their favour (now parts of the Gulshakhali, Amtali, Gathachara and Kalapakojya *Mauzas* in Rangamati district). However, this was far less than the amount of land needed, which was between 460,000 to 920,000 acres according to the above calculation. The Government undertook certain measures to bridge this gap, providing settler families with lands belonging to indigenous people.

“The problem was *solved* by settling the migrants on land already belonging to resident hill people with dire disregard to the rights of the landowners. The remainder of the migrants were settled on land quite inadequate to support them. Consequently, a large number of encroachments took place, and in some cases, straight-forward land-grabbing by violently militant settlers.

A large number of these new migrants were given deeds to lands which were either settled earlier in the name of indigenous farmers or were already in their possession. The numerous disputes over land, especially regarding the scarce plough lands and fringe lands was almost a foregone conclusion because the amount of land required for the new settlers as per the fairly generous Government estimate was simply not there.”¹⁸⁸

The settlers were allocated lands without the necessary measures being taken to ensure that these lands did not have prior owners, and the *mauza* headmen and village *Karbaris* were not consulted or involved in the land allocation process. As a result, many of the land allocations were illegal or irregular, as the specified lands were already registered in the names of indigenous people, or were under their occupation and cultivation.

The settlers proceeded to take the lands, and often resorted to violent means. This was facilitated by the provision of arms to some of the settlers, ostensibly for their protection. The ensuing tension between the indigenous people, and the settler communities erupted in violent incidents including rape, torture, mass killings etc. reports of which are well-documented.¹⁸⁹ Some 55,000 refugees fled to India, and although some have returned - approximately 5,000 persons in 1994 in a recent repatriation arrangement - the majority of the refugees are reluctant

to return without a political settlement to the Chittagong Hill Tracts question.¹⁹⁰ The impact of the settlement programme on the land rights of the indigenous people is summarised below:

1. *Plough lands*. Although by the late 1960s, all these lands, being the most prized agricultural lands, were already registered in the names of their owners, many of them were resettled by incoming migrants. The settlers, coming from the plains were familiar with cultivating plough lands only, and were therefore eager to have these lands.

Many took these lands from their legal owners by force, or obtained them by other unlawful means. In some cases the legal owners, many of whom were illiterate and/or unversed in bargaining, were persuaded to part with their valuable lands for prices far below the market value. Of these lands, the majority are in the Kaokhali *thana* in Rangamati district, in the Dighinala, Panchari, Matiranga, Tabalchari and Ramgarh *Thanas* in Khagrachari district and in the Lama and Alikadam *Thanas* in Bandarban district.¹⁹¹

2. *Hillside lands*. This type of land was another component of the land allocation package for the settler families, and some migrant families were resettled on hillside land. However, the plains people were unused to terraced or *jum* cultivation, being familiar with intensive plough cultivation and with irrigation facilities. Therefore, they found it difficult to cultivate these lands which was a factor in their forcible taking of plough lands from indigenous farmers, e.g. in Kaokhali *Thana* in Rangamati district and in Dighinala *Thana* in Khagrachari district.

3. *Fringe lands*. As mentioned earlier these are the lands which emerge when the water level of the lake is lowered. These lands were also illegally or forcibly taken by the settlers from their original owners. The worst cases are reported to be in Barkal and Langadu *thanas* in Rangamati district.

4. *Fruit gardens and private forests*. Many indigenous people have also lost their fruit gardens and forests to the settlers. "Some of the larger gardens and the woodlands with teak and gamar trees were very valuable. The larger trees were chopped down almost overnight to be sold as timber or firewood on the lucrative black market. Some of the fruit gardens are still thriving now, but in the hands of people who had nothing to do with their creation. In some places, almost no traces are left of the previous habitations. These were said to be deliberate acts to disguise any remaining traces of evidence of appropriation."¹⁹²

and other unlawful methods of dispossession of indigenous peoples, there is also a noticeable increase in violence and human rights abuses. Accounts of mass killings, rape, torture, detention continue to be reported from the Chittagong Hill Tracts, including a disturbing pattern of failure, by the authorities, to prosecute those responsible.¹⁹³

Legal Implications of the Settlement Programme

The settlement programme infringed on fundamental human rights, and in particular the land rights, of the indigenous peoples. The following is a brief summary of the relevant legal provisions:

a. Constitutional law

The following provisions of the Constitution of Bangladesh are relevant:

- Article 27 states that all its citizens are equal before the law, and are entitled to equal protection of the law;
- the principle of non-discrimination on the basis of religion, race, caste, sex or place of birth (Article 28(1));
- every citizen has the inalienable right to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, and that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. (Article 31).

The indigenous people were divested of their lands without due process of law, and with little means of redress. Efforts were made to provide the legislative framework for the entry and settlement of the settler families in the Chittagong Hill Tracts, yet there were no corresponding efforts to secure the property rights of the indigenous peoples. In addition, there were reports indicating that the state officials/authorities discriminated against the indigenous people on the basis of both race, and religion.

b. Chittagong Hill Tracts Manual

Rule 34 (11) of the Chittagong Hill Tracts Manual states that “A tenant permanently under Government shall have permanent and heritable rights in the land for which he pays rent unless there is a definite

contract that his right is not permanent or heritable, subject to the provisions contained in these rules for his lease, if any regarding resumption". S/he can be ejected from the land for:

- 1) failure to pay an arrears of rent;
- 2) use of land in such a manner as to render it unfit for the purpose of the tenancy; and
- 3) other specified purposes in the lease agreement.

"All lands not kept under cultivation were liable to resumption". Thus, the indigenous farmers who were using and occupying their lands retained the right to these lands which were permanent and heritable.

Although the Chittagong Hill Tracts Manual was amended to accommodate this programme, the spirit of the Manual, being one of protection of the rights of the indigenous peoples, was violated:

"Thereby, an essential part of the Manual came to be disregarded. In fact, one of the major factors behind the present problems related with land dispossession in the Chittagong Hill Tracts is the failure to follow the Chittagong Hill Tracts Manual in its essence, the failure to accord with its spirit rather than seek a mechanical application of the various bits and pieces of legislation that make up the Manual."¹⁹⁴

Rule 39 of the Manual requires that the three Chiefs be consulted *on important matters affecting the administration of the Chittagong Hill Tracts*. As mentioned earlier, this was not adhered to. A settlement programme whereby thousands of plains settlers were to be brought into the Hill Tracts is per se an *important matter*. The indigenous administrative authorities at the *mauza* and village level - the headmen and *Karbaris* - were also not consulted or otherwise involved in the implementation of the settlement programme despite customary law and usage which dictates that all settlement and/or transfers of land should be made after prior consultation with the concerned headman who is responsible for the land and revenue matters within his/her *mauza*.

Many landowners - according to some estimates, thousands - filed petitions with the authorities for redress. A few have received some form of redress, but most cases have not been resolved. In one case the indigenous landowner was given the option of alternative lands or to have his land acquired and compensation paid to him. (See Case Studies for details).

due mainly to a lack of faith in the national legal system which they feel discriminates against indigenous peoples. It is also difficult for the indigenous peoples to fully comprehend the intricacies of the national legal system, and many cannot speak or read the national language Bengali, which is the official language, much less English. In addition, many of the farmers cannot pay the official and unofficial expenses for court cases¹⁹⁵ which are often lengthy and expensive.¹⁹⁶

c. Customary Law

The rights of the indigenous people to their homes and their lands, including their *jums* and their rice-fields (paddy lands) was infringed upon by the settlement programme. They lost their traditional lands without due process of law. No measures were taken to provide them with compensation or alternative lands of comparable quality. Their access to their lands was curtailed, and their socio-economic development deteriorated as a result.

Customary law is a distinct legal regime and is based on customs and usages. In addition to private land rights such as a right to a house, to farms etc. the indigenous people also collectively own the land of the Hill Tracts. Therefore any land not under private ownership and possession is jointly used, managed and controlled by the community as a whole. Use and extraction are governed by the concept of shared rights and each person or family only takes what is necessary.

The transfer of thousands of landless settler families from the plains to the Hill Tracts and the allocation of lands in their names infringed both the private and the customary rights of the indigenous peoples. As many of the settlers were granted lands which already belonged to the indigenous people, and were registered in their names with the relevant authorities, the settlement programme violated their private rights to their paddy lands, gardens, and *jums*. In addition, their customary rights to graze cattle, cut sun grass, and to build a homestead in non-urban areas were also jeopardised.

With the arrival of some 450,000 settlers in an area which was already facing difficulties in adequately providing for its original inhabitants, access rights to the scarce natural resources, primarily the land-base, became a major cause for tension. This happened even though many of the customary rights including the right to *jum*, to agricultural and homestead lands, to cut sun grass and to graze cattle, were also incorporated in the Chittagong Hill Tracts Manual.

d. International Law

Of major significance within the context of Bangladesh's international obligations is the International Labour Organisation's Convention No. 107 on Indigenous and Tribal Populations, 1957. This Convention has the distinction of being the first international treaty specifically to deal with indigenous peoples/populations, and was ratified by Bangladesh in 1972. Relevant provisions include the following:

- "The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized." (Article 11).
- Article 13 (2) obliges ratifying States to take measures to protect its indigenous peoples/populations from being taken advantage of: "Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of the customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members."

The rights of the indigenous people to their traditional lands, both individual and collective, were ignored during the implementation of the settlement programme. Both individually, as landowners and homeowners, and collectively as an indigenous people, their land rights were violated. The ILO has raised this matter on a number of occasions as mentioned earlier, and the issue remains one of concern for the ILO Committee of Experts of the Application of Conventions and Recommendations when supervising the application of Convention No. 107 in Bangladesh:

"It also recalls that many thousands of non-tribals have been settled in the Hill Tracts area, often on the lands traditionally occupied by tribal families.....It therefore hopes that appropriate procedures will be established to resolve land claims by tribals for the recovery of traditional lands..."¹⁹⁷

At the United Nations, the practice of transmigration, or settlement programmes has been categorised as Population Transfers. A study on the Human Rights Dimensions of Population Transfer, Including Implantation of Settlers is under consideration at the United Nations. The practice of population transfer is found to be "...prima facie, unlawful and violates a number of rights affirmed in human rights and humanitarian law for both the transferred and receiving popula-

tions.”¹⁹⁸ The report goes on to state that:

“Population transfer is clearly unlawful and prohibited where its purpose or effect constitutes or amounts to genocide, torture and its related elements, slavery, racial and systematic discrimination, and interference with the legitimate exercise of the right to self-determination, or where it is manifestly disproportionate to the exception of military necessity in humanitarian law.”

It concludes that:

“International law prohibits the transfer of persons, including the implantation of settlers, as a general principle. The governing principle is that the transfer of populations must be done with the consent of the population involved.... The transfer of a population and the implantation of settlers and settlements is forcible if it is done without the consent of a given population.”

The resettlement of the plain settlers in the Hill Tracts was clearly illegal. It falls within the above criteria of population transfer and is also significant for its ethnocidal implications.

5. Militarization

Another policy which has had grave repercussions for the indigenous people has been the Government’s counter-insurgency strategy in the Hill Tracts.

The Jana Samhati Samiti (JSS) formed an armed wing, the Shanti Bahini or Peace Corps in 1972 which has been engaged in a low intensity conflict with the government forces for the past 20 years. As a counter-insurgency measure, there is a large number of armed personnel in the Hill Tracts, and the human rights violations in the area have been attributed in large measure to their continuing presence:

“In 1980 an estimated 30,000 regular and paramilitary troops were stationed in the Hill Tracts and the number of police stations doubled in the four years from 1976 to 1980. Inevitably the presence of the armed forces in such large numbers has provoked conflicts. Tribal people feel intimidated by the armed presence and with good reason. Since 1975 numerous killings, beatings and attacks on property have taken place. On 25 March 1980 about 300 unarmed tribal people were killed by troops and Bengali set-

tlers in the small village of Kaukhali Bazaar. In June 1981 riots by Bengali immigrants, supported by government soldiers, caused the deaths of approximately 500 tribal men, women and children in the area around Matiranga. Since April 1986 there has been further violence against tribes people."¹⁹⁹

In 1991, an independent fact-finding commission - the Chittagong Hill Tracts Commission - described the Chittagong Hill Tracts as "a military occupied area. The military dominates all spheres of life."²⁰⁰ The situation has not changed since then.

In relation to Bangladesh's international obligations, the Chittagong Hill Tracts issue has also been raised at international treaty monitoring bodies, including the International Labour Organisation and the UN Committee on the Elimination of Racial Discrimination.²⁰¹ The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation has expressed grave concern on a number of occasions when examining the fulfilment of Bangladesh's obligations under the provisions of the Convention on Indigenous and Tribal Populations, 1957 (No. 107). It has expressed concern regarding the life and property of these peoples and stated that "...the life and property of the tribal population are not adequately safeguarded as prescribed by the Convention No. 107 and provided by the Constitution of Bangladesh".

The European Parliament passed a resolution on 16 September 1992 condemning the massacre of hundreds of indigenous Jummas at the cluster village of Logang on 10 April 1992 and called on the Government of Bangladesh "to terminate military involvement in the Chittagong Hill Tracts area".²⁰²

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions²⁰³ reported that he "continued to receive numerous reports indicating that human rights violations, including extrajudicial, summary or arbitrary executions, by members of the security forces of Bangladesh continued to occur in the Chittagong Hill Tracts despite negotiations between a government commission and the *Jana Samhati Samiti*." He highlighted the case of "Chandu Moni Chakma and 12 other Jumma people, reportedly killed on 17 November 1993 when soldiers and Bengali settlers attacked a student demonstration at Naniachar Thana, Rangamati" and that up to 100 persons were killed during this attack. The Special Rapporteur drew attention to the failure of the Government to carry out full, independent investigations with the aim of identifying those responsible and bringing them to justice, or



Army camp overlooking the rice fields of a Chakma community. (Photo: IWGIA archive)

Army patrol (Photo: IWGIA archive)



to take any preventive measures as required under international law.

There are also well documented reports of gross violations of human rights including unlawful killings, torture, rape, unlawful detention etc. as reported by international human rights organizations. They have been committed by the Bangladesh army and para-military troops in the Chittagong Hill Tracts.²⁰⁴ The Chittagong Hill Tracts issue has also been raised regularly at the UN Working Group on Indigenous Populations, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and at the Commission on Human Rights by international NGOs and by indigenous people from the Chittagong Hill Tracts.

Despite assurances to the contrary from the Government of Bangladesh, the Chittagong Hill Tracts still remains under *de facto* military rule. The number of armed personnel in the Hill Tracts is estimated to be approximately 15,000 to 20,000 although it is difficult to verify the exact number with any great accuracy. The reason given to justify the presence of the large number of Bangladesh Army and other para-military forces in the Chittagong Hill Tracts is counter-insurgency operations. However, this is no longer valid under the present circumstances whereby a cease fire is in operation and a dialogue is continuing between the Government and the *Jana Samhati Samiti* (JSS). Yet there are no indications of the armed forces leaving the Chittagong Hill Tracts or of there being any reduction or significant decrease in their numbers.

The Influence on Socio-Economic Issues

The involvement, and the influence, of the armed forces is not confined to security matters, but extends to socio-economic issues.²⁰⁵ Their influence pervades many aspects of civilian life. For instance, the General Officer Commanding (GOC), who is the senior-most military official responsible for the area, is also the Chairman of the Chittagong Hill Tracts Development Board. In addition, indigenous students applying to some of the educational institutions need to submit a "No-Objection Certificate" from the GOC before their applications will be considered.

In the Hill Tracts, although there is a civilian administration with the armed forces responsible for security matters, in practice it is the military which is the highest decision-making authority, including in land matters. The army officers hold ranks higher than their civilian counterparts, and are generally better trained. Their decisions carry greater weight than that of the civil officers. For instance, the chief

military officer responsible for security matters in the Chittagong Hill Tracts, the general officer commanding wields greater authority in all matters relating to the Hill Tracts than the commissioner, who has overall authority for the Chittagong Hill Tracts. However, the GOC outranks the commissioner and as chairperson of the Chittagong Hill Tracts Development Board has a greater say in practical matters affecting the Chittagong Hill Tracts. The Chittagong Hill Tracts Development Board was established in 1976 and is the state agency responsible for the co-ordination of development-related work in the Chittagong Hill Tracts, including financial allocations.

For civil administrative purposes, the Chittagong Hill Tracts is divided into three districts and each district has a Deputy Commissioner (DC), whereas for security purposes, the army has divided the CHT into some six divisions under the authority of a brigade commander. Each of these areas is further sub-divided into zones headed by a lieutenant colonel (also known as the Zone Commander), while the equivalent civilian officer at this level is the Thana Nirbahi Officer (TNO) who has the rank equivalent to a lieutenant captain only. Thus the balance of power is in favour of the armed forces and they rank higher than their civilian counterparts at all levels. As a result the military officers tend to dominate joint meetings such as co-ordination meetings, meetings of the Development Board etc., and it is their decision which often prevails.

Policy of Counter-insurgency

A policy of counter-insurgency was the initial basis for the presence of the military in the Hill Tracts. The institutionalisation of this strategy provided the armed forces with a policy framework to justify their involvement in other socio-economic matters relating to the Chittagong Hill Tracts, in particular land. The application of this counter-insurgency strategy in the Hill Tracts has been a major factor in the problem of land dispossession of the indigenous people as a result of state-applied policy. Their deteriorating socio-economic condition is a direct consequence of military intervention implemented through the following methodological approach: a. Relocation and re-settlement in government-created village groupings; b. Land occupation by the military.

These two systems are not mutually exclusive and a combination of both systems has also been utilised. The following is a summary of the major components of the above two systems for military intervention

in land-related matters.

a. Government-created Villages

From the early 1970s to 1980s, a major thrust of the military's counter-insurgency strategy has focused on relocation and resettlement of the indigenous people of the Chittagong Hill Tracts. Many indigenous people were forced to leave their lands and their homes and move to designated areas (cluster camps) where they remained under military control and surveillance.²⁰⁶ The objective was to prevent the local communities in any way to assist the Shanti Bahini by providing them with basic supplies. There were two different systems of regroupement:

1. Resettlement schemes such as the *Joutha Khamar* or Collective Farm Project (mainly in the southern part of the Hill Tracts), or the Upland Settlement Programme (in the northern areas);
2. Artificially constituted village groupings or cluster camps called *shantigrams* in Chakma area), *borograms* among the Marma and Tripura, or *adarshagram* (ideal village). The plains settlers were also sometimes placed in what are called *guchchagrams*.²⁰⁷

For an initial period of six months financial and other assistance was provided by the authorities to the relocated people. After this period they were supposed to become self-sufficient. However, this was extremely difficult, if not altogether impossible, as the indigenous people were only permitted to leave the cluster village to tend their farms and crops for a restricted amount of time only. As a result of these factors, the economic condition of the indigenous people was such that a fact-finding mission found:

“Several villages complained that there was not enough land to live from, while in two villages the people, who looked absolutely emaciated, said that they had no land and were starving.”²⁰⁸

There are also reports of ethnic violence and in April 1992, the indigenous cluster villages of Logang was burned down reportedly by plains settlers with the military taking no preventive action. Many indigenous people lost their lives.²⁰⁹

It is difficult to verify the exact number of armed personnel in the Chittagong Hill Tracts, or the number of army camps. The Chittagong Hill Tracts Commission reported:

“From military sources the Commission gathered that there are over 230 army camps, more than 100 BDR camps and over 80 police stations in the Chittagong Hill Tracts.... These figures do not include Ansar or the Village Defence Parties.”

What is undeniable is that a major portion of the Bangladesh armed forces are in the Hill Tracts and some estimates believe that for every six civilians there is one member of the security forces. However, at issue here is not the question of military strength, but their involvement in non-security matters.

b. Land Occupation by the Military

The Bangladesh Army has been occupying hundreds, perhaps thousands of acres of indigenous lands, including homes, plantations and farms, without the consent of the owners. The lands are simply taken over, and the indigenous landowners do not receive any compensation, financial or otherwise (see Case Studies for details). Many of the camps have been there for some twenty years, since the early 70's when the army commenced its operations in the Hill Tracts. The lands occupied in such manner generally fall within two categories: (a) registered in the names of the land owners; and (b) lands belonging to them as homestead lands (Rule 50 (1) of the Chittagong Hill Tracts Regulation.²¹⁰ The applicable legal procedures are the following:

Acquisition. The Deputy Commissioner is empowered to acquire land by an order in writing (section 3), and on payment of compensation for the land and for any structures, bamboo, trees or standing crops (section 4) of the Chittagong Hill Tracts (Land Acquisition) Regulation, 1958; *Resumption.* “The Deputy Commissioner may resume any land, for which a settlement has been granted, for any public purpose and in case of such resumption, compensation will be paid to the lessee or tenant for any buildings or structures erected on the land and for standing crops and trees grown and planted by him on such land.” Compensation also has to be paid for the land where the lessee or tenant has acquired permanent and heritable right over the land according to the lease deed. (Rule 50 (3) (a) of Regulation 1 of 1900).

The above legal provisions are not applied as a matter of general practice, and the indigenous peoples lose their lands, their houses and their farms. The following case study provides a practical illustration of the role and authority of the armed forces in land and related mat-

ters and the concomitant lack of authority of the civil institutions in the Chittagong Hill Tracts:

*The Mogban Rehabilitation Scheme*²¹¹

In 1977-78, as part of the *Joutha Khamar* or Collective Farm Project of the Chittagong Hill Tracts Development Board (Chittagong Hill Tracts Development Board), about 100 indigenous farming families were rehabilitated on 500 acres of land at No. 115 Mogban *Mauza*, Mogban Union, Rangamati District on a 3-year project. Each family was allotted 5 acres of land by survey officials, under the supervision of the Sub-Divisional Officer (SDO) and in the presence of the *mauza* headman and union council chairman. The formal settlement documentation was in process, and the farmers cultivated fruits including pine-apple, jack fruit, mango and banana and trees (mainly teak and *gamar* or *gmelina arborea*) on these lands.

In the early 1990's, the Bangladesh Army took over the land of Jibtali Bazaar, Kaptai *Thana*, Rangamati District, for use as an army camp. The military authorities proposed to relocate the displaced shopkeepers and traders of Jibtali Bazaar in the Chittagong Hill Tracts Development Board Collective Farm area of Mogban, and requested the Deputy Commissioner to compulsorily acquire the land of the rehabilitation village on their behalf. The DC clarified that although the land was *khas* or state-owned (usually indigenous common lands), it was currently under the possession of indigenous families within the framework of a collective farming project.

A number of applications and representations were made by and on behalf of the Mogban farmers:

1. On 8 April 1993 a representation was filed by the indigenous farmers and the Union Council chairman, Sujit Dewan and the *mauza* headman, Kali Shankar Dewan, to the Brigade Commander, 15 Infantry Brigade (Kaptai Region), Kaptai, Rangamati District asking for the cancellation of the proposed rehabilitation scheme. A report from the headman was enclosed with suggestions for alternative sites and solutions including a proposal by the Union Council chairman to purchase 10 to 12 acres of land for the rehabilitated shopkeepers; and the identification of 20 to 25 acres of *khas* unclaimed land near the old bazaar.
2. The villagers made several other verbal and written representations to the civil and military officials requesting cancellation of the pro-

posed rehabilitation scheme.

3. On 3 March 1993 the commander of the Island Army Camp, Kap-tai, Lieutenant Colonel Mohammed Saidur Rahman, gave an inter-locutory order to suspend the rehabilitation project until the DC could report on the matter.
4. The Mogban farmers and their representatives, led by their head-man and elected union councilors, met the chairman of the District Council, Parijat Kusum Chakma, to ask his assistance. Mr. P.K. Chakma suggested they should meet the GOC (General Officer Commanding) of the 24 Infantry Division, Chittagong, Major General Azizur Rahman as he was not able to help them. This is despite the authority vested in the District Council Chairman by section 64 of the District Council Acts which states that prior approval of the District Councils is a necessary pre-requisite to the settlement of any land within the boundaries of the Hill Districts.
5. A written memorandum was submitted to the GOC which he refused to accept, but gave verbal assurances that he would consider the matter. In the meantime, some 70-80 shopkeepers and their families were rehabilitated in Mogban from Jibtali Bazaar.
6. On 1 January 1994, Chairman PK Chakma sent an official request to the GOC asking him to resolve the Mogban-Jibtali issue in a just manner.
7. The GOC did not reply to the Chairman's request.
8. On 21 January 1994 a junior staff member, Lieutenant Colonel Mohammed Ferdous Miah, responded on the GOC's behalf expressing his "sincere regret" at not being able to address the Chairman's request for reasons of "overall welfare" (*sarbik kalyanarthe* in Bengali).
9. On 7 June 1994, the affected Mogban people sent another appeal to the Secretary, Special Affairs Division²¹², Prime Minister's Secretariat, Dhaka. The memo was duly recommended by Colonel Oli Ahmed²¹³, Minister of Communications and chairperson of the National Committee on the Chittagong Hill Tracts.
10. On 11 June 1994, Mr. Dipankar Talukdar, Member of Parliament (Rangamati), wrote to the Special Affairs Division asking that the army-supervised Mogban rehabilitation programme be stopped.



Internally displaced Chakam woman with severely malnourished child. Kassalong Reserve Forest, Rangamati District. (Photo: Ina Huma)



Chakma refugees in a transitory camp after they have returned from India and found their land and homesteads occupied by Bengali settlers. Dighinala Thana, Khagrachari District. (Photo: Christian Erni)

11. Despite repeated requests to stop the proposed scheme by the indigenous farmers of Mogban including their representatives, both traditional and elected, no action was taken to cancel or revoke the proposed rehabilitation scheme.
12. Between December 1993-January 1994, the Jibtali merchants were rehabilitated in Mogban. The indigenous farmers were displaced with no compensation for their lands, structures, trees or crops and with no measures to secure an alternative site for them to live on.

The Mogban Rehabilitation Scheme is one case out of many such instances. It demonstrates the influence and authority enjoyed by the armed forces in the Chittagong Hill Tracts and the consequent powerlessness of the local government councils and the indigenous leaders, both traditional and elected, in such situations.

In a recent development the military has been negotiating leases upto the year 2000 with some indigenous landowners for the areas already under their occupation. This clearly indicates that, notwithstanding the GOB-JSS talks, the military has no intentions of withdrawing from the Hill Tracts in the near future, and at least not until the 21st century.

Refugees

As a result of the prevailing unrest and the lack of security of both life and property in the Hill Tracts some 55,000 Jummas have fled their homes and now live in refugee camps in India in appalling conditions. Within the camps the health and sanitation facilities are poor, and access to essential food and other basic supplies is limited.²¹⁴

Although Bangladesh has made a number of attempts to repatriate the refugees, with the co-operation of the Indian Government, the refugees refuse to return without guarantees of life and property.

However during 1994 some Jumma families (approximately 5,200 persons) were persuaded to return to the Chittagong Hill Tracts within the framework of a 16 point repatriation offer made by the Bangladesh Government. Two batches of refugees were repatriated, the first phase in February and the second in July-August 1994. Under the terms of a 16 point agreement the returnees were to have their lands returned to them, their old jobs back, and other financial and material rehabilitation assistance.

a monitoring team which visited the Chittagong Hill Tracts in March 1995, including among its members Indian Government officials and indigenous people.²¹⁵ In protest at the Government of Bangladesh's non-fulfillment of its own terms of repatriation, the Chair of the Kha-grachari District Refugee Rehabilitation Committee, Mr. Kalparanjan Chakma, MP, resigned from his chairmanship of the committee.²¹⁶

A report on the repatriation process indicates that many of the returning indigenous families found the homes and their lands "...which were still under occupation of the [plains] settlers and security forces."²¹⁷ The remaining refugees in India refuse to return unless and until they can be fully assured of the restitution of their lands and homesteads, security of life and property, and their repatriation is under the auspices of the UNHCR and the ICRC. Further they state:

"The problem of the Jumma refugees is an inter-related problem of the Chittagong Hill Tracts political crisis. Safety and security of the Jumma people can only be guaranteed if the political crisis of the Chittagong Hill Tracts is solved once and for all."²¹⁸

CHAPTER 5

INTERNATIONAL INSTRUMENTS

Recent developments indicate that indigenous peoples all over the world are asserting their rights. Many have successfully negotiated the recognition of their identity as a distinct people. This has encompassed their right to participate in any decision-making process affecting them, and especially in the protection of their land and resources which are the basis for the enjoyment of their culture and traditions.

The Inuit of Greenland, the Saami in Finland, Norway, Russia and Sweden, the indigenous peoples in Mexico, Colombia, Bolivia and Paraguay, among others, have all achieved state recognition of their right to their traditional way of life, including by constitutional amendments. It is essential that in Bangladesh, too, the necessary legislative and administrative measures are taken, with the consent and participation of the peoples concerned, to recognize the separate identity of the indigenous peoples and their rights to their traditional lands.

The rights of the indigenous peoples to their lands and resources are recognized as a fundamental issue for indigenous peoples within the context of international standards. The following international instruments are germane to the discussion of indigenous lands rights in the Chittagong Hill Tracts:

1. The Universal Declaration of Human Rights (1948)

In the context of land rights Article 17 of the Declaration is relevant:

- 1) *Everyone has the right to own property alone as well as in association with others.*
- 2) *No one shall be arbitrarily deprived of his property.*

Thus the dispossession of indigenous lands without due process of law as practised in the Chittagong Hill Tracts is contrary to the above mentioned instrument which is the principal source of international law, and as such has the force of law.

2. International Labour Standards

The International Labour Organization (ILO) has the distinction of having adopted the only two international instruments dealing exclusively with indigenous rights, namely the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Convention on Indigenous and Tribal Peoples, 1989 (No. 169). Land is one of the issues addressed in these instruments:

“As the loss of ancestral lands is the biggest single cause of the problems faced by indigenous and tribal peoples, security of possession of these lands and safeguards against relocation is a sine qua non for their future. The issue is complex, entailing very different culturally-derived ideas about the nature of land ownership and use. Western notions such as non-private lands being part of the public domain are alien and dangerous for people who have lived on what have become “public” lands (without benefit of a deed) since time immemorial.”²¹⁹

ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107)

Convention No. 107 is described as:

“.....the first attempt to codify the rights of indigenous and tribal peoples in international law. Convention No. 107 covered a range of issues such as land rights, working conditions, health and education.”

Soon after gaining independence from Pakistan, Bangladesh ratified Convention No. 107 in 1972. Articles 11 to 14 address the issue of land rights. Article 11 recognizes both individual and collective land rights:

11. The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

According to the provisions of this Convention, the Bangladesh Government is required to recognize the concepts of both individual and collective land rights in the CHT. However, there is a marked lack of effective measures to ensure that the indigenous Jummas can enjoy these rights without hindrance and this includes their individual rights to their homes and farms, *jums*, and private forests as well as the collective rights to their common lands including forests.

With regard to the issue of development and displacement, an ILO

publication on indigenous peoples notes with interest:

“Ironically, development itself, once touted as a key to a better life for all people, is a cause of some indigenous peoples’ worst problems. In the name of progress, their traditional lands, the primary source of livelihood and ethnic identity, have been taken away from them or significantly reduced. Often lacking legal title, indigenous and tribal peoples are not consulted on the decisions made to develop their ancestral lands... Restricted access to land has resulted in poverty, unemployment, insecurity and social disintegration.”²²⁰

Article 12 of Convention No. 107 addresses the issue of displacement:

“12 (1). The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.”

Article 12 (2) goes on to say that such removal should take place only if:

“necessary as an exceptional measure, they [the indigenous people] shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.....”

Article 12 (3) states:

“Persons thus removed shall be fully compensated for any resulting loss and injury.”

The indigenous people of the CHT have been displaced time and again from their traditional lands without their consent, and without receiving compensation for the damages sustained. This has been as a result of the implementation of the government’s development projects and policies including (1) the creation of government forests; (2) the submersion of their lands by the construction of the Kaptai hydro-electric power project; (3) settlement of lands to outsiders; and (4) the military’s counter-insurgency strategy. They have never received full compensation although it is clearly specified in the above provision of Convention No. 107.

Again, Article 13 is relevant in requiring that governments respect the

procedures for the transfer of land rights among the indigenous peoples, and that measures are taken to ensure that their lack of knowledge of the national laws and regulations does not facilitate the loss of their lands by non-indigenous persons:

13. (1) Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected...

(2) Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.

There have been many reports of the indigenous people either selling or mortgaging their lands to plains people, including unscrupulous money lenders, at prices far below the market value of the property. There have also been allegations of trickery and fraudulent practices to divest the indigenous peoples of their lands.

As mentioned in earlier sections of the report, the ILO has consistently raised the question of the situation of the indigenous peoples of the CHT during the process of supervising the application of Convention No. 107 in Bangladesh. Detailed discussions also took place during the 1986 and 1987 sessions of the Conference Committee on the Application of Standards on this issue, and two missions also visited the area.

Furthermore, the Committee of Experts on the Application of Conventions and Recommendations has emphasized the need to protect the land and related rights of the indigenous peoples on a number of occasions and has also directed the attention of the Government to the need for appropriate procedures to resolve land claims by the indigenous people for the recovery of traditional lands prior to conducting a proposed cadastral survey in the CHT area.²²¹
Recommendation No. 104

It is also relevant to note the provisions of Recommendation No. 104 which supplements Convention No. 107:

2. Legislative or administrative measures should be adopted for the regulation of the conditions, de facto or de jure, in which the populations concerned use the land.

3.(1) *The populations concerned should be assured of a land reserve adequate for the needs of shifting cultivation so long as no better system of cultivation can be introduced.....*

5.(1) *Save in exceptional circumstances defined by law the direct or indirect lease of lands owned by members of the populations concerned to persons or bodies not belonging to these populations should be restricted.*

(2) *In cases in which such lease is allowed, arrangements should be made to ensure that the owners will be paid equitable rents. Rents paid in respect of collectively owned land should be used, under appropriate regulations, for the benefit of the group which owns it.*

6. The mortgaging of land owned by members of the populations concerned to a person or body not belonging to these populations should be restricted.

The Government is recommended to adopt the necessary legal and administrative measures to regulate the land use patterns of the indigenous people of the CHT not only in law but also in practice. Thus it is recommended that in order to more fully apply the provisions of Convention No. 107, measures are taken to establish a regulatory basis for the protection of the traditional land rights and land use patterns of the indigenous people, including their customary right to *jum*.

ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169)

The integrationist approach of ILO Convention No. 107 was criticised and as a result of mobilisation and demands from indigenous peoples and others, Convention No. 107 was revised and Convention No. 169 on Indigenous and Tribal Peoples adopted in 1989. Convention No. 169 is the most comprehensive international instrument relating specifically to indigenous and tribal peoples and has seven articles dealing with land (articles 13-19). Although Bangladesh has not yet ratified Convention No. 169, the article has persuasive authority as the most recent and most comprehensive international instrument relating to indigenous peoples. The following provisions are noteworthy:

Article 14 (1). The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for

their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15 (1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources...

(2) In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to these lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16 prohibits their removal from their traditional lands except in an emergency as an exceptional measure, with their free and informed consent, and if that is not possible, then according to specific procedural requirements, including public inquiries. However, they shall have the right to return to their traditional lands once the reason for their relocation has ceased to exist. Article 17 addresses the issue of land alienation and the need to protect indigenous peoples from being taken advantage of by others in order to secure the ownership, possession or use of land belonging to them. Article 18 calls for the establishment of penalties for, and prevention of, unlawful intrusion upon indigenous lands. Article 19 states the following with regard to national agrarian programmes:

19. National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the

area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

Convention No. 169 goes beyond the provisions of the earlier Convention No. 107 and requires states to adopt special measures “for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” (Article 4). It is based on the principles of consultation and participation, and Article 7 states that the peoples concerned shall have the right to decide their own development priorities and to exercise control over their own economic, social and cultural development. In addition, any development projects to be implemented in indigenous lands must be preceded by prior impact assessment studies carried out in co-operation with the peoples concerned (Article 7(3)).

Although Bangladesh has not yet ratified Convention No. 169 and remains bound by the provisions of the earlier Convention No. 107, it is a member of the International Labour Organisation which is the responsible organisation for Convention No. 169.

3. The UN Declaration on the Rights of Indigenous Peoples (Draft)

After a number of years of intense deliberations the United Nations Working Group on Indigenous Populations (WGIP) has agreed a draft Declaration on the Rights of Indigenous Peoples (henceforth referred to as the Draft Declaration).²²² The text was elaborated with the active participation of indigenous peoples and their organisations, governments, specialised agencies, academics and non-governmental organisations.

The WGIP submitted this draft to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1994 for further consideration. The Sub-Commission adopted the Draft Declaration²²³ as agreed upon by the members of the WGIP, and submitted it to its parent body, the Commission on Human Rights.

At its 1995 session, the Commission established an open-ended inter-sessional working group to elaborate a draft of the “United Nations Declaration on the Rights of Indigenous Peoples” for consideration and adoption by the General Assembly during the International Decade of the World’s Indigenous People.²²⁴ The Working Group of the Commis-

sion began its work in November 1995, and the process continues.²²⁵

It is envisaged that the Declaration will be adopted within the framework of the UN Decade of Indigenous Peoples (1995-2004), which is one of the objectives of the Decade.²²⁶

6. An objective of the Decade is the adoption of the draft "United Nations declaration on the rights of indigenous peoples" and the further development of international standards as well as national legislation for the protection and promotion of human rights of indigenous people, including effective means of monitoring and guaranteeing those rights.

The provisions of the Draft Declaration as adopted by the Sub-Commission which are relevant to land and resource rights include the following:

Article 21. Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26. Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 28. Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international co-operation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

Article 30. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands...just and fair compensation shall be provided for such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

In addition, the Draft Declaration prohibits the removal of indigenous peoples from their lands or territories without their free and informed consent, and with the right to return (Article 10); the right to restitution of their lands, territories and resources, and if that is not possible to fair and just compensation including the provision of lands, territories and resources of equal quality, size and legal status (Article 27); the recognition of the ownership, control and protection of their cultural and intellectual property (Article 29).

Although this instrument when it is adopted will be a Declaration, its persuasive authority will be substantial given the “active partnership” basis of the drafting process, and the “partnership in action” framework of the Decade for the World’s Indigenous Peoples.

4. UN Conference on Environment and Development (UNCED), June 1992

The following international agreements were formulated and adopted at the Earth Summit as the above conference is also called:

The Declaration of Rio on Environment and Development

Principle 22 relates directly to indigenous peoples and is quoted below in order to highlight the need to recognize the role of indigenous peoples and their traditional knowledge systems in environmental protection and sustainable development:

Indigenous peoples and their communities... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Attention should be focused on effective measures needed to include the participation of indigenous peoples in devising strategies towards

sustainable development. As discussed in this report, the modalities for participation of the indigenous peoples of the CHT in the formulation and implementation of any policies, plans and programmes concerning their lands and their environment is minimal. This issue needs to be addressed in order to include the lessons learned from their traditional knowledge systems which are in accordance with sustainable practices of environmental protection and conservation.

Agenda 21

Agenda 21 is the Programme of Action for Sustainable Development and is "A blueprint for action for global sustainable development into the 21st century". The relevant chapters are Chapter 10: *Integrated approach to the planning and management of land resources* and Chapter 26: *Recognising and strengthening the role of the indigenous people[s] and their communities*.

Chapter 10 states: "The broad objective is to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources... the rights of indigenous people[s] and their communities ...should be taken into account." (10.5).

Chapter 26 recognizes that "Indigenous people[s] and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands... the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy." In addition, "...national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people[s] and their communities." (Basis for Action. 26.1)

Thus the Bangladesh Government is urged to take into account the provisions of these two chapters within the framework of any environmental and/or developmental programme of action which will affect the indigenous peoples of the CHT.

UN Convention on Biological Diversity, 1992

The United Nations Convention on Biological Diversity (or Bio-diversity as it is commonly known) was adopted on 22 May 1992 in Nairobi, Kenya and opened for signature at the UN Conference on Environment and Development (UNCED) at Rio de Janeiro, Brazil in

June 1992. Bangladesh is a signatory to this Convention.

Article 8 (j) of the Convention calls upon the contracting parties to:

“.....respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.”

The Environment Policy of Bangladesh, 1992 does not contain any specific references to indigenous peoples or contain modalities for their involvement in the conservation and sustainable use of bio-diversity. As this policy document was drafted in 1992, any future policies need to take into account the provisions of the Bio-Diversity Convention in order to meet Bangladesh’s international environmental obligations.

Article 8 (h) of the Convention prohibits the introduction of alien species which threaten eco-systems, habitats or species. The present practice of importing foreign trees such as teak, rubber and eucalyptus into the Hill Tracts and cultivating plantations of these trees as cash crops is contrary to the provisions of the Bio-Diversity Convention. The side effects of these mono-culture plantations has been soil erosion and denudation, and the impairment of the regenerative properties of the indigenous species in the tropical forests of the Hill Tracts.

5. International Financial Institutions

Many if not most of the projects implemented in third world countries are implemented in indigenous areas, and often with financial and technical assistance from international development agencies such as the World Bank and the regional banks. Increasingly, attention is being drawn to the social dimensions of these projects and the need to incorporate such concerns into the project design from the conceptualisation to the evaluation phase.

The World Bank

The World Bank has developed a number of policy guidelines to guide its involvement in projects affecting indigenous peoples including:

Operational Directive 4.20 on Indigenous Peoples (September 1991, currently being revised)

The objective of this directive is to describe the Bank policies and processing procedures for any projects which may affect indigenous peoples:

2. The Directive provides policy guidance to (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous peoples caused by Bank-assisted activities. Special action is required where bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.

The Bank's objective towards indigenous peoples is "to ensure that the development process fosters full respect for their dignity, human rights and cultural uniqueness. More specifically, the objective at the centre of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits."

It goes on to state that "the strategy for addressing the issues pertaining to indigenous peoples must be based on the *informed participation* of indigenous peoples themselves." The core activities in this regard include direct consultation with the peoples concerned and the incorporation of traditional knowledge systems into the project approach. However, in those cases where adverse impacts are unavoidable and plans to mitigate such effects have not been developed, "the Bank will not appraise projects until suitable plans are developed by the borrower and reviewed by the Bank."

OD 4.20 includes the procedures to address issues on indigenous peoples, and the prerequisites of an indigenous peoples' development plan which is a component of any investment project that affects indigenous peoples. This includes an assessment of the legal framework, the land tenure system and mechanisms for local participation.

Operational Directive 4.01 on Environmental Assessment (October 1991)

The World Bank has also developed a policy guideline for environ-

mental assessment (EA) of any Bank-financed projects to be carried out during project preparation. "The purpose of the EA is to improve decision making and to ensure the project options under consideration are environmentally sound and sustainable." The EA's are the responsibility of the borrower-Government. However, "the Bank expects the borrower to take the views of affected groups and local NGOs fully into account in project design and implementation, and in particular in the preparation of EAs."

The Asian Development Bank

Most of the projects implemented in the CHT are financed, if only in part, by the Asian Development Bank (ADB) which is the major lending agency in the region. The Bank estimates that "of the more than 1,200 loan projects approved by the Bank during the past 25 years, about 50 projects may have involved indigenous peoples. While the numbers may be small, the need to address the demands and aspirations of indigenous peoples continues to be an important development issue."²²⁷ However, by its own admission:

"Some development projects financed by the Bank may infringe upon ancestral domains...The decision to provide investment support for such projects should therefore be made in consultation with the borrowing countries and based on a careful analysis of the impact of such projects on the indigenous peoples and their attitudes towards the development projects."

The ADB is in the process of drawing up guidelines to orient its policy approach to indigenous peoples affected by ADB-financed projects. Based on an ADB Working Paper on Indigenous Peoples,²²⁸ the proposed policy and operational approaches follow the World Bank Operational Directive 4.20 on Indigenous Peoples and emphasize the responsibility of the Bank and its Developing Member Countries (DMC) to inform and involve indigenous peoples in the development process. "The broad objectives of the Bank's policy on indigenous peoples should be to ensure that the development process facilitates their informed participation and fosters full respect for their dignity, human rights, and cultural uniqueness."²²⁹

The Working Paper goes on to state the specific objectives as being the following:

"to ensure that indigenous peoples receive culturally compatible social

and economic benefits from development projects, and to avoid or mitigate the adverse effects of such interventions. In the context of development operations where indigenous peoples are affected either beneficially or adversely, Bank policy objectives should be to ensure, together with the borrowing country governments, that proposed activities are (i) commensurate with the needs and demands of affected peoples; (ii) compatible in substance and structure with culture and social and economic organisations; and (iii) conceived, planned and, implemented, to the maximum extent possible, with the consent and participation of the affected communities or their genuine representatives."

The policy document of the Asian Development Bank on Indigenous Peoples is in draft form and has not yet been finalised.

6. UN Expert Meetings

The following UN meetings on specific subjects also included discussions and decisions relevant to indigenous land rights:

UN Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States

On the request of the Economic and Social Council (ECOSOC), the above meeting was held in Geneva, Switzerland from 14 to 20 January 1989. The seminar concluded that:

b) The concepts of "terra nullius", "conquest" and "discovery" as modes of territorial acquisition are repugnant, have no legal standing, and are entirely without merit or justification to substantiate any claim to jurisdiction or ownership of indigenous lands and ancestral domains, and the legacies of these concepts should be eradicated from modern legal systems[.]

UN Expert Meeting to Review the Experiences of Countries in the Operation of Schemes of Internal Self-government for Indigenous Peoples

A meeting was held in Nuuk, Greenland from 24-28 September 1991 on the above issue at the invitation of the Government of Denmark and the Home Rule Government of Greenland as part of the programme of activities of the second decade to Combat Racism and Racial Discrimination. The conclusions and recommendations adopted by this

expert body include the following which is relevant to the discussion:

*5. Indigenous territory and the resources it contains are essential to the physical, cultural and spiritual existence of indigenous peoples and to the construction and effective exercise of indigenous autonomy and self-government. This territorial and resource base must be guaranteed to these peoples for their subsistence and the ongoing development of indigenous societies and cultures.*²³⁰

UN Technical Conference on Practical Experiences in the Realisation of Sustainable and Environmentally Sound Self-development of Indigenous Peoples

This meeting was held in Santiago, Chile from 18-22 May 1992 at the request of the Commission on Human Rights,²³¹ and was attended by governments and indigenous peoples and their organisations among others. The Technical Conference adopted a number of recommendations of which the following are relevant:

9. That projects of national development which affect indigenous peoples be preceded by studies of their socio-economic and environmental impact, with the direct and effective participation of indigenous peoples, Governments and agencies promoting development...

14. That the environmentally sound management of resources and ecosystems of indigenous peoples be encouraged through the provision of the necessary funds so that an adequate standard of living can be guaranteed...

17. That biosphere reserves and natural parks in indigenous territories be established only with the consent of indigenous peoples and with their active participation, control and management.

UN Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims

At its 1994 session, the UN Commission on Human Rights decided that a seminar on indigenous land rights and claims should be held (Resolution 1994/29 of 4 March 1994). This request was endorsed by its parent body, the Economic and Social Council in its decision 1994/248 of 22 July 1994.

CHAPTER 6

RECOMMENDATIONS

There is an immediate need on the part of the Government of Bangladesh and the international community, to take immediate and effective steps to resolve the issue of land and resource rights of the indigenous peoples of the Chittagong Hill Tracts. The question of land rights is inextricably linked to the problem itself and unless the land issue is resolved there can be no definitive solution to the crisis situation in the Chittagong Hill Tracts of Bangladesh.

Based on an analysis of the situation, and after intense discussions with the peoples concerned, the following recommendations are put forward as possible strategies to advance the peace process.

The recommendations are divided into two sections, long term and short term. The short term objectives deal with immediate and practical issues, which contribute to the realisation of the long term objectives.

1. Long Term Recommendations

These recommendations aim to promote a long term solution to the Chittagong Hill Tracts question:

Constitutional Recognition

The Bangladesh Constitution at present does not include any provisions recognising the pluricultural composition of its population, and the distinct identity of its indigenous peoples. Thus it is urged that the necessary measures are taken to incorporate the following provisions into the Constitution of Bangladesh:

1. Recognition of the pluri-cultural composition of the national society;
2. Recognition of the identity, culture, language, traditions, land and related rights of the indigenous peoples of the Chittagong Hill Tracts, and elsewhere in Bangladesh;
3. Recognition of the special status of the Chittagong Hill Tracts as an autonomous indigenous area.

Devolution of Powers

1. An autonomous regional administration should be established in the

Chittagong Hill Tracts (including the three Hill Districts of Rangamati, Bandarban and Khagrachari);

2. This regional body must be composed of indigenous peoples of the Chittagong Hill Tracts to be elected through democratic processes from, by and among the indigenous peoples of the Chittagong Hill Tracts;
3. Indigenous identity should be the principal criterion for participation in the electoral process. This should be based on self-identification as indigenous to the Chittagong Hill Tracts (the fundamental criterion) and objective criteria including but not limited to (i) recognition by the community as belonging to their people; and (ii) ability to speak the indigenous language of that people or having a parent or grandparent who can or could do so.
4. The regional body must have the mandate, power and resources, including technical and financial resources, to enable it to function in an effective manner;
5. It must be vested with the power and the authority to be the highest decision-making body in the Chittagong Hill Tracts in policy and related matters.

Legislative Framework

The international obligations of Bangladesh are not adequately implemented at the local and national levels. Therefore it is necessary that the following measures are taken to ensure their application within the framework of national law and practice:

1. To bring national legislation into harmony with international provisions relating to the rights of indigenous and tribal peoples;
2. To enact the necessary legislative and administrative measures to secure the effective implementation of international obligations;
3. To provide training and awareness of relevant international instruments to the authorities, officials and other persons who come into contact with indigenous peoples, or are most likely to do so, in particular those agencies dealing with land and related issues and local law enforcement.

2. Short Term Solutions

It is essential that the Government take immediate steps to settle the land-related problems including but not limited to the following:

Protection of Land Rights

1. Legislative and administrative measures should be taken to recognize the customary land rights of the indigenous peoples of the Chittagong Hill Tracts;
2. The settlement, lease or transfer of land in the Chittagong Hill Tracts to non- indigenous persons should be prohibited;
3. Existing laws and regulations should be amended to ensure 1.1 and 1.2 above. This may entail the amendment of relevant provisions of Regulation 1 of 1900, the CHT Land Acquisition Regulation of 1958, the District Council Acts of 1989 and the Forest Act of 1927, among others.

Revocation of Orders

The following notifications of the Government of Bangladesh have had adverse effects on the land rights of the indigenous peoples, present and potential. They should be revoked with immediate effect:

1. *Ministry of Land Decision of July 1992 to hold a cadastral survey in the Chittagong Hill Tracts*: If conducted in the present circumstances, with over 55,000 refugees in India and many people who are internally displaced, a cadastral survey will facilitate the registration of land in the names of the present occupants. Many of the families occupying the lands are plains settlers brought into the area by the government transmigration programme between 1978-84;
2. *Ministry of Environment and Forests notifications to create reserve forests of more than 175,000 acres of land in the CHT* (published in Bangladesh Gazette on 21 May 1992): this will result in the displacement of hundreds of indigenous families who are living within these areas.

Repatriation of the Plains Settlers (to areas outside

the CHT region)

1. The settlers who have been moved to the Chittagong Hill Tracts by the Government's programme of population transfer should be *voluntarily* repatriated to areas outside the CHT;
2. The Government programme included the allocation of lands, rations and financial assistance. The same may again be offered for their repatriation to areas outside the CHT region;
3. The settler-repatriation process should include, but not be limited to the following mechanisms:
 - A survey to determine the extent of areas occupied by settlers;
 - A survey to determine the exact number of settlers and their families in the CHT;
 - An assessment of a just price for the lands and farms in their possession;
 - An examination of the title deeds and documents given to settlers to verify their status;
 - A mechanism to deal with the situation of those settlers who are in possession of indigenous lands with no legal title (*kabuliyat*);
 - A process of information and consultation with the settlers to assess their needs and requirements;
 - The identification of appropriate lands for their re-settlement outside the CHT area;
 - The allocation of adequate funds for the repatriation-process including funds for the rehabilitation of the settlers in the alternative area/s.
4. *Phase by Phase Approach*: Due to the complexities of the situation this process should be implemented on a phase by phase basis, which may be spread over a period of two to three years. The following two approaches are suggested, or a combination of both as they are not mutually exclusive:
 - Simultaneously from those *mauzas* which have the largest plains settlements such as the areas and surroundings of Barkal, Mainimukh, Langadu, Kaokhali, Panchari and Dighinala; or
 - *Mauza* by *mauza* as the land registration documents are maintained accordingly.
 - The repatriation should be conducted under the auspices of the UN and its agencies in particular the UN High Commissioner

- for Refugees, of international organisations e.g. the International Society of the Red Cross and Red Crescent, and with the involvement of independent observers to monitor the process;
- The necessary financial and technical assistance should be allocated by bilateral and multilateral donors and funding agencies for the implementation of this process including the European Community, NORAD, DANIDA, SIDA etc.;
 - A time-frame should be set for the completion of this process, e.g. two to three years.

Repatriation of Jumma Refugees (from India)

The Jumma repatriation process, which has been postponed due to non-fulfilment of the agreed conditions, can only be commenced in correlation with the repatriation of the plains settlers to areas outside the Chittagong Hill Tracts. To the contrary, there is potential for ethnic tension and an escalation into violence. Thus it is strongly urged that the two repatriation processes are kept separate yet linked. To realize this in a cohesive manner without creating opportunities for conflict, the following proposals are outlined:

1. This repatriation process should be parallel to, and dependent upon, the repatriation of the plains settlers specified above;
2. It should be implemented on a *Phase by Phase* basis. This can follow two basic approaches (depending on the methodology adopted for the repatriation of the plains settlers under 3.4. above):
 - a. Repatriation to the areas of largest settlements (if the plains repatriation process is completed following 3.4.1 above);
 - b. Area by area (*mauza by mauza*) as they are vacated by the plains families, with those Jumma refugees repatriated to homes and lands belonging to that specific *mauza* (if the “*mauza-by-mauza* approach” is followed as recommended above);
3. There should be a specific time-frame established for the completion of this process;
4. The Jumma repatriation process should be under the supervision of international agencies including the UN High Commissioner for Refugees and other UN bodies, in co-operation with the Jana

Samhati Samiti, the Jumma Refugees Welfare Association and other indigenous organizations;

5. The necessary financial and technical assistance should be made available by the international community for the repatriation as well as the rehabilitation of the Jumma refugees.

Repatriation of the Internally Displaced People

1. Depending on the methodology adopted for the plains settlers' repatriation process, the land claims of those people who were internally displaced should also be taken into account in order to ensure the restitution of their lands;
2. This should be simultaneous with the refugee repatriation process;
3. It should be conducted under the auspices of the international team in charge of the Jumma repatriation process, and with the involvement of the indigenous administrative authorities concerned.

Demilitarisation of the CHT

There should be a return to democracy in the Chittagong Hill Tracts and the area should be demilitarised immediately. This should include the following measures:

1. Cessation of armed operations by the Bangladesh Army, and para-military and para-police security forces of the Government of Bangladesh;
2. Withdrawal of the Bangladesh Army, Para-Military, Para-Police and other security forces on special duty in the Hill Tracts;
3. The immediate cessation of involvement of the Army and other security forces in civil administration including the CHT Development Board, education, land administration and forest matters;
4. The removal of all military camps from the Chittagong Hill Tracts.

Conclusion

These recommendations have been addressed primarily to the Government of Bangladesh and to the Jana Samhati Samiti, who have been asked to take them into account in the peace process.

The United Nations and its specialised agencies, other inter-governmental and non-governmental organisations, and in particular the international donor community should actively encourage the Government to take immediate and effective measures to incorporate these recommendations into any measures taken to secure a just and peaceful resolution to the situation in the Chittagong Hill Tracts.

It is hoped that this paper will contribute in some measure to finding a solution to the conflict. This is even more urgent now within the context of the Peace Accord agreed on 2 December 1997 by the Government of Bangladesh and the JSS. The following chapter will give a short update on this and other recent developments.

CHAPTER 7

RECENT DEVELOPMENTS

The aim of this report was to facilitate the negotiations between the Government of Bangladesh and the Jana Sanghati Samiti (JSS). Since this report was finalized and distributed in 1996 (to the GOB and the JSS, amongst others), it has served as a reference point during this process, especially when the discussions centred on the issue of land rights, a key component of the entire peace process. In some small measure the report contributed towards a productive and focussed dialogue.

On 2 December 1997, the Government and the JSS signed a Peace Accord. This agreement outlines the requisite measures to be taken to reach a peaceful and lasting resolution to the violent ethnic conflict that has been raging in the CHT for more than twenty years. It addresses many of the issues raised in the report, and it is therefore necessary to reassess the land rights situation within the context of the Accord. This is of particular relevance in the light of the legal reforms and other changes that have already been made since the signing of the Agreement, and those that are proposed for the future.

The following analysis brings the report up to date with the most relevant developments affecting the land rights of the indigenous Jummas in the CHT, post-Accord, and provides an overview of the impact and influence of the Accord.

Key Components of the Accord

The key components of the Accord are the following:

- Recognition of the cultural identity of the indigenous people and their laws and customs;
- Recognition of the customary land rights of the indigenous peoples;
- Strengthening of the three Hill District Councils²³²;
- Formation of a CHT Regional Council;
- Establishment of a separate Ministry for the CHT;
- Formation of a Commission on Land;
- Rehabilitation of the international Refugees and Internally Displaced People;
- Dismantling of non-permanent military camps and the return of the soldiers to their regular barracks within cantonments and other

- permanent garrisons; and
- Decommissioning and deposit of arms by the Shanti Bahini/JSS fighters and rehabilitation of the ex-combatants.

The Accord has been hailed as an historic document by the indigenous peoples, who believe that this is a major step forward towards restoring peace and prosperity to their region. After over twenty years of ethnic violence, there were celebrations and the Peace Accord was seen as an opportunity to once more bring peace and tranquillity to the region. However, although a large section of the indigenous population have welcomed the signing of the Accord, some indigenous activists have declared that the Accord does not meet the demands of the indigenous peoples for self-determination. They strongly condemn the Accord as a “sell-out” and have initiated anti-Accord demonstrations to protest against the signing of the Accord. This has continued over the last two years, and there have been problems recently between pro-Accord and anti-Accord CHT groups, with some confrontations ending in violence. At a recent rally of an anti-Accord indigenous group, the United People’s Democratic Front or ‘UPDF’, there were allegations of excessive police action to break up their meeting. This problem requires to be dealt with in a fair and democratic manner.

Within the mainstream national political parties, the leaders of the opposition Bangladesh National Party (BNP) vehemently oppose the Accord and view it as a threat to national sovereignty. This is ironic as it was during Begum Zia’s tenure as prime minister that the round of negotiations leading to the signing of the Accord was initiated. The BNP and other opposition parties including the Jamaat-e-Islami Party and the Jatiyo Party led by former President Ershad, among others, have organized rallies and protest demonstrations to voice their opposition to the Accord and their intention to nullify it once they return to power. The passing of bills to legalize the provisions of the Accord in the national parliament was accompanied by acrimonious debate, with the opposition parties lodging thousands of amendments to water down the Accord. The Awami League has done its best to defend the Accord as a just and timely step towards national peace and prosperity.

Internationally, the CHT Peace Accord has been hailed as a major breakthrough in relations between a State and its indigenous peoples with congratulations flowing in from various leaders including UN Secretary General Kofi Annan, and US President Bill Clinton. In September 1999, Sheikh Hasina was awarded the UNESCO peace prize for the CHT Peace Agreement.

Self-Government

Historically the CHT was an independent region, but since it was declared a separate district in 1860, a dyarchical form of government has been in place there with the traditional form of self-government headed by the chiefs/rajas, and the rapidly expanding civil administration headed by a deputy commissioner. The Accord recognizes the role of the traditional authorities, e.g., the chiefs/rajas and headmen etc., with minor changes. There are also provisions for the participation of the chiefs/rajas in an advisory capacity in the land commission and in the ministry of CHT affairs. No changes are proposed in the Accord to the existing system of representation in the national parliament²³³ (one member from each district) or to the local government units of the lower tiers. However, major reforms are to be made with regard to the structure and functions of the District Councils of 1989, with two new institutional initiatives towards self-government for the CHT, a regional council and a ministry for the CHT.

The Accord provides for the devolution of powers to the indigenous peoples of the CHT within the framework of the following three institutions:

Regional Council

The main focus for self-government is a Regional Council for the CHT (Section C/Ga of the Accord). It is to have co-ordinating and supervisory authority over the Hill District Councils, the district police, the civil administration and the CHT Development Board, the most important development-related institution in the CHT. It is to be composed of 22 members, and is to have two-thirds indigenous representation. The Chairperson has to be indigenous, and there are twelve seats allocated for the different indigenous peoples, six seats for the non-indigenous people and three seats exclusively for women (two of whom must be indigenous). The Regional Council is to be indirectly elected by the members of the Hill District Councils for a period of five years.

No legislation is to take place without *prior consultations* with the Regional Council, and it is to have authority over indigenous law and social justice. The Council also has the prerogative to formally request the Government to remove any inconsistencies between the 1989 Acts and the CHT Regulation of 1900 and related laws, through legislation (Clause 11, Section C/Ga). As mentioned earlier, the 1900 Regulation

functions in the nature of a constitutional legal instrument for the CHT and screens the application of other laws to the region, including the extent and nature of their application.²³⁴ The Council also has authority over the work of non-governmental organizations (NGOs) active in the CHT, disaster relief, and the power to issue licenses for the establishment of any heavy industries in the region.

In May 1999, an interim Regional Council was established under the leadership of Mr. Jyotirindra Bodhipriya Larma, the chief of the JSS.

Ministry for CHT Affairs

The Accord provides for the establishment of a Ministry of CHT Affairs (MICHITA) to function as an apex body with supervisory and executive authority over the CHT self-government system. Its power and authority includes the following: (i) the residual jurisdiction of the Government to legislate on CHT matters; (ii) revisional authority over the functions of the Hill District Councils, the district administrations headed by the Deputy Commissioners, and the Regional Council; and (iii) allocation of funds for the Hill District Councils and the Regional Council. The ministry has a number of departments, including a section devoted to legal matters and a section for developmental issues. It is to be headed by an indigenous person, and is to involve the participation of the CHT MPs, the traditional chiefs, a representative of the RC chairperson, the three HDC chairpersons, and three non-tribal CHT residents to be nominated by the Government as advisers.

In terms of policy decisions and co-ordination of CHT affairs, the ministry will play an important role and its impact and influence on all matters relating to the CHT, including land will be crucial. One problem has been the lack of co-ordination of CHT affairs at the central level of government, and it is envisaged that the ministry will be pivotal in this regard.

The ministry has already started functioning and Mr. Kalpa Ranjan Chakma, the MP from Khagrachari District has been put in charge of the ministry since 1998. However, the fullest potential of the ministry is still to be tested as only a few departments have as yet been set up, and its exact role vis-a-viz other ministries having subordinate departments in the CHT, is yet to be defined. These developments will require inter-departmental agreements and memoranda of understanding. Moreover, the advisers of the ministry have not been appointed until today.

Hill District Councils

The third major institution in the CHT self-government system are the three 1989 Hill District Councils (as amended). The Accord substantially strengthens their power and authority, and they are to play a major role in land-related matters.

As per the terms of the Accord, one of the most significant changes to their powers and functions is in regard to the financial and developmental functions and prerogatives of the HDCs. This is to be enhanced through the following main components:

- Increase in the number of subjects that are to be transferred to the HDCs;
- Enhance of administrative powers over the functions of the transferred (and to be transferred departments and subjects);
- Enhance of powers of taxation (largely local rates and taxes);
- Power to receive a part of the income/royalties from extraction and exploration of forest and mineral resources (timber, gas and possibly petroleum);
- All developmental projects to be implemented and funded through the HDCs including those relating to the subjects transferred to the HDC and the projects initiated at the national level.

The other important change is in the *legislative sphere*. In addition to retaining the prerogative of formally asking the Government to re-consider the application of any unsuitable or undesirable laws in a concerned district, the HDCs are now empowered to independently formulate and adopt administrative regulations and to be consulted by the GOB prior to the adoption of any rules under the concerned Act. However, it is in the sphere of *land rights* that the power and authority of the HDCs post-Accord is most significant:

Section 64 of the 1989 Act has been amended to state that no land within the boundaries of the relevant hill district is to be given in settlement, leased, purchased, sold or transferred without the prior approval of the HDC concerned. In addition, the list of subjects to be transferred to the HDCs is to include land and land management, although this

authority is yet to be vested on the HDCs.

Previously, at least in theory if not in practice, the prior sanction of the Hill District Councils was required before unclaimed “state-owned” or “*khas*” lands (indigenous common lands) could be settled or leased out by the district land administration authorities. Similarly, no lands within their respective districts were to be transferred to non-residents without the prior sanction of the Hill District Councils. However, the category of exceptions to this rule – by which authority is retained by the district collectorate and superior authorities of the Government – is wide,²³⁵ and the District Councils did not have any power regarding the compulsory acquisition of lands by the Government. It is mentionable also that even this limited authority was never transferred to the HDCs although it was provided for in the 1989 Acts.

The 1997 Accord, and the resultant legal reforms, narrow down the category of the aforesaid exceptions. There is no reference to “non-resident” in the Accord leading one to infer that it would depend upon the HDC to decide whether or not non-residents may acquire lands within the hill district concerned. Furthermore, according to the provisions of the Accord, the Hill District Councils are to exercise a measure of authority over indigenous, GOB revenue and land administration officials (lower level officials), and to receive a part of the land revenue collected within each district. The Accord also specifies that *prior consultations [with] and consent* of the relevant Hill District Council is required for compulsory acquisition of lands, hills and forests in the CHT by the Government (Clause 26(2), Section B/Kha). Similarly, the consent of the HDCs will also be required in the case of all settlements, leases and transfers of land within the jurisdiction of the HDCs.

However, the Accord does not give the Hill District Councils any authority to deal with the lands already leased out by the Government (neither did the 1989 Acts). Also excepted are the agricultural lands illegally occupied by the government-sponsored Bengali settlers, and the leases to non-resident individuals and corporations for commercial plantations and the establishment of heavy industries. Nevertheless, the requirement for the HDCs’ consent on matters of leases and transfers of lands as outlined in the Accord is a significant step towards the independent formulation of land allotment and land management policies by the Hill District Councils.

Previously, the primary responsibilities for land administration were vested in the district collectorates headed by the deputy commissioners. The DCs were obliged to consult the *mouza* headmen regarding

land grants and the use of natural resources (the *mouza* headmen are appointed on the basis of the circle chiefs' nominations and include a few women as well as some ethnic Bengalis). The Divisional Commissioner of Chittagong (a senior civil servant) and the Ministry of Land (earlier, the Board of Revenue) used to exercise revisional jurisdiction over the powers of the deputy commissioners. Under the proposed new system, although the powers hitherto exercised by the deputy commissioners will now be subject to the consent of the Hill District Councils, the district collectorate will still continue to play a role in land administration, albeit in a different manner.

It is pertinent to note that two years after the Accord was signed, legislation to empower the Regional and Hill District Councils in land and resource management and development projects (including funding), among other matters, is yet to be adopted.²³⁶ As reported by Samiran Dewan, chairman of the Khagrachari Hill District Council from 1989 to 1998, the indigenous peoples have been gravely concerned about the post-Accord situation with regard to development issues related to land use. The CHT region has been deprived of its legitimate and fair share of development funds, and its peoples victimized and dislocated by centrally planned development projects which have consistently disregarded the development perspectives of the indigenous peoples, and their traditional and innovative knowledge and practices related to sustainable development and environmental protection. He went on to indicate that two years after the Accord, many of its provisions have not been implemented of which the following are of crucial importance:

- the transfer of financial autonomy to the HDCs and the CHT Development Board;
- the agreed transfer of authority to the HDCs with regard to development planning at the national level, the channeling of related funds and implementation of relevant projects;
- the transfer of authority over the CHT Development Board to the Regional Council through the necessary legislation and executive orders;
- the transfer of authority to the HDCs over resource management, law and order, and other crucial matters; and
- the carrying out of impact assessment studies prior to the implementation of development projects in the CHT to ensure that they are both culturally appropriate and environmentally sound (current projects do not fulfil this criterion).²³⁷



After the signing of the Peace Accord: Arms deposit ceremony on 10 February 1998 in Khagrachari. (Photo: Raja Devasish Roy)

Restoration of land rights still pending: Returned Chakma refugees showing certificate recognizing their claims. However, enforcement of the order by the authorities is lacking and the settlers are still occupying their land. Dighinala Thana, Khagrachari District. (Photo: Christian Erni)



Land being such a vital issue in the CHT, it is essential that authority over land administration is transferred to the Hill District Councils with immediate and substantive effect. This is of even graver significance when considered in the context of mineral reserves and royalties. The CHT is known to be rich in mineral reserves and some years back, Shell initiated exploratory activities. However, the JSS held its staff to ransom and requested Shell to leave the CHT until and unless the indigenous peoples enjoy the right to decide their own priorities for development. Recently, United Meridien Corporation, a company registered in the United States, has carried out some seismic surveys in the CHT in order to identify oil and gas reserves. This company has reportedly merged with another American company, which is continuing its work in the CHT. In order to safeguard the indigenous peoples' cultural integrity and their rights and interest, it is essential that all exploratory and extractive activities be carried out (if at all) with the participation and consent of the indigenous peoples. It is equally important to ensure that mining activities are not disruptive of the local environment. Also, with regard to the sharing of benefits from mining (which will reportedly start soon), the Accord only mentions that the HDCs will receive a share of the royalties, but gives no further details of how this should be done. Thus, this too will need to be clarified.

It will also be necessary to establish a healthy and positive working relationship between the district administrations and the Hill District Councils, one which is built on mutual understanding and trust. If such measures are not taken, then the land rights of the indigenous peoples in the CHT will be irreparably lost to them, and those seeking to obtain land leases or to transfer their land leases will continue to suffer unnecessarily due to bureaucratic red tape and the corrupt practices of land administration officials, and be at the mercy of the bureaucrats of both institutions.

Commission on Land

Another major development with regard to land-related issues under the Accord is the formation of a Commission on Land. The Commission is expected to provide quick, inexpensive and easy remedies for cases of land dispossession taking into account local customs and usages with regard to land rights and land claims. It is to be headed by a retired judge of the High Court of Bangladesh, and other members include the chairpersons of Hill District Councils, a representative of the RC chairperson, the three traditional rajas, and the commissioner of Chittagong Division, a senior civil servant.

The terms of reference of the Commission suggest that it is open to both the indigenous people and non-indigenous settlers to lodge complaints before it. The fact that the majority of the members of the Commission will be indigenous indicates, that at least theoretically, it will have the benefit of their knowledge and experience with regard to land claims based upon indigenous customs, practices, usages and local conventions governing the use and ownership of lands, some of which are partially recognized in written regulations such as those of 1900. However, that by itself does not guarantee that ownership rights based upon indigenous law, customs and usages will be treated equally with those based upon registered title. The backgrounds of the indigenous members of the commission is also likely to play an important role in the work of the commission. It is noteworthy that although the (interim) RC is dominated by the members of the JSS, the chairpersons of the three HDCs are all members of the ruling Awami League.

The land disputes will most likely be very complicated due to possible conflicts between customary law and codified land administration regulations. A likely source of difficulty is the question of priority when conflicting claims based upon the following or a combination of such appears before the Land Commission: (i) registered title from the district land registries; (ii) titles of homesteads of indigenous people based on the registers of the headmen; (iii) ownership and user rights based upon informal leases granted by headmen, e.g. for the Karnaphuli reservoir area lowlands, i.e. fringe lands; (iv) rights based upon long use or prescription; and (v) custom-based rights. The permutations, and the envisaged complications are numerous and highly complex requiring a detailed knowledge of both national and more importantly, indigenous laws and customs.

There is also the related question of whether the land grants made to the government-sponsored non-indigenous ethnic Bengali settlers amounted to a valid exercise of power in accordance with law, not only because of the custom-based rights of the indigenous people, but because of other formalities and procedures that were expressly provided for in the relevant laws on settlements and leases which did not seem to have been followed during the settlement process.²³⁸ As mentioned earlier, many of the indigenous peoples have lost their lands to government-sponsored settlers some of whom have been provided with leases by the district collectorates. This was done without any consultations with the indigenous leaders, a legal requirement under the 1900 Regulations. In other cases, the settlers do not have any documentary title deeds for their occupancy of the indigenous lands (see under the Policies and Programmes section for details). In any case, it is clear that the resolution of disputes between indigenous residents

and non-indigenous government-sponsored settlers will be the most pressing matter before the Land Commission. In the CHT peace process, this has emerged as one of the most sensitive and political issues, in addition to the legal implications, and one which will have to be resolved in a fair and just manner.

Another issue with potentially serious repercussions relates to the establishment of the Land Commission per se. The Government announced its formation on the strength of an executive order. A number of lawyers and CHT leaders have expressed their concern that without formal legislation opponents of the Accord may challenge the validity of the constitution of such a commission, especially since the scope and extent of the Commission's authority is one normally exercised by a court of law or tribunal.²³⁹ In addition, under the provisions of the Accord, there is no right of appeal against the decisions of the Commission, which is to be considered final. Although such a provision will not bar challenges through judicial review in the High Court, it is quite a sweeping power and one which vests the Commission with final and decisive authority over land-related disputes in the CHT.

The Accord only provides the broad guidelines for the mandate of the commission, details of its working schedule and other particulars have not been settled as yet. These measures will also require further legislation. Therefore, the report-writer shares the concerns of those who feel that there should be full formal legislation to constitute the Commission in such a manner that it will not infringe on any rights and processes, and to vest in it the requisite authority to provide adequate remedies for land-related disputes in the CHT in accordance with the terms of the 1997 Accord. In this context, it is essential that the commission takes into account the existing customs and practices of the indigenous peoples and their relationship to land. This provision needs to be duly honoured so that the indigenous peoples' *custom-based land rights are not made subservient to codified law* during the deliberations of the commission.²⁴⁰ And this includes the collective aspects of their land rights e.g., common lands, forests and other territories. The Draft Declaration on the Rights of Indigenous People, currently under consideration by the UN Commission on Human Rights and the ILO Conventions No. 169 and 107 (the latter has been ratified by Bangladesh) could serve as useful reference documents for the work of the Commission.

In December 1998 the constitution of the Commission for a three-year period and the name of the head of the commission was announced²⁴¹. However, the subsequent death of the proposed chairman of the commission a few months ago has left the position vacant. The Govern-

ment is in the process of consulting the Regional Council and other CHT leaders about the appointment of a new chairman of the Land Commission. The other members of the Commission will also have to be formally appointed as well.

Rehabilitation of the International Refugees

As mentioned earlier in the report, in 1994, during the rule of the Bangladesh Nationalist Party (BNP) Government under Begum Khaleda Zia, an agreement was reached between the Jumma Refugees Welfare Association (JRWA), the organization of the CHT refugees who had sheltered in India during the civil war in the CHT, and the Government of Bangladesh. In accordance with this agreement, about 5,000 refugees returned to the CHT in 1995.

On 9 March 1997, another agreement was reached between the JRWA and the Government of Bangladesh under the leadership of Sheikh Hasina of the Awami League, and the remainder of the approximately 70,000 refugees were repatriated to Bangladesh under its provisions. This agreement is generally referred to as the 20-point Agreement and is referred to in the 1997 Accord (see Clause 1, Section D/Gha).

The JRWA-GOB agreement also provided for the return of government jobs, financial assistance and food aid, and the return of dispossessed lands. According to reliable reports from various sources, a large number of the refugees have been able to re-possess their lands with governmental assistance and through personal efforts employing peaceful and legal means. However, a substantial number of them have equally been unable to regain their lands which are now occupied by government-sponsored ethnic Bengali settlers. In an interview with a national daily, the JRWA president, Upendra Lal Chakma stated that the homesteads of 1,339 families, the chards and plantations of 774 families and the wet-rice fields of another 942 families had not been returned to their original owners.²⁴²

A number of lawsuits and quasi-judicial proceedings have been instituted by the refugees and internally displaced peoples; they are pending in the law courts and in the offices of the district administration officials. In another development, fraudulent cases have been filed by Bengali settlers against the Jumma refugees, thereby complicating the matter further as well as delaying justice.²⁴³

With regard to the unresolved land claims of the refugees, representa-

tives of the Government are reported to have stated that the future Land Commission will deal with these problems,²⁴⁴ a position with which the JRWA does not agree. Bakul Chakma, a representative of the JRWA made it clear that the return of the refugees' lands was an integral part of the 20-point GOB-JRWA agreement concluded on 9 March 1997, and therefore, that it should not be linked to the 2 December 1997 Peace Accord and the establishment of the land commission.²⁴⁵ Bakul Chakma also confirmed that some of the refugees' lands are under occupation by the army, police and the para-military Bangladesh Rifles (BDR) as camps.

Although procedural difficulties may be one cause of delay in enabling the refugees to regain their lands, it is difficult to accept that this is necessarily the main reason for all the cases concerned. There are other factors involved based on discrimination and the lack of political and bureaucratic will to ensure the restitution of their lands and homesteads and orchards to the refugees. As Rupayan Dewan reported to the UN, "nothing of substance has been done to either provide financial assistance to them, or to rehabilitate them in their original homes and lands."²⁴⁶

Many CHT residents feel that independent monitoring of the GOB-JRWA agreement would have led to more faithful adherence to its terms and conditions, and in fact the JWRA did demand that observers from the International Committee of the Red Cross (ICRC), the UN High Commissioner for Refugees (UNHCR) and foreign and local journalists, be allowed to monitor the agreement on the refugees. However, this demand was rejected by the Government and is not included in the GOB-JWRA agreement.

The 1997 Accord does not address the problem of the Chakma refugees who now live in Arunachal Pradesh in India. These people were displaced by the Kaptai Dam in 1960 and took shelter in Mizoram State of India (1963-64), when they realized that no alternative farmlands were to be provided for them by the then (East) Pakistani Government. They were finally rehabilitated in Arunachal Pradesh in 1964 (then the Union Territory of Northeast Frontier Agency or NEFA). These refugees have not been given Indian citizenship because the state government in Arunachal Pradesh considers the Chakma refugees (along with Hajongs and Tibetans) to be "foreigners" who do not have the right to live in Arunachal Pradesh or to become Indian citizens. The main reason may be related to the fact that as citizens they would have the legal right to participate in political activities e.g., elections to the national and state legislatures and local government bodies, and this may have

repercussions in the demographic composition of the state.

The Arunachal Pradesh Government had plans to evict the Chakmas. However, a judgment of the Supreme Court of India declared the Chakmas to be Indian citizens and placed a restraining order on the Arunachal Pradesh Government. It may be noted, however, that the judgment by itself does not guarantee citizenship rights in the face of opposition by the state government, and the Chakmas have not yet been able to register on the electoral roll.²⁴⁷ It is reported that a number of citizenship applications are now under consideration by the Union Home Ministry, but as of this date, it is not known whether the citizenship certificates in the concerned cases have been issued.

Rehabilitation of the Internally Displaced Indigenous Peoples

As mentioned earlier in the report, there are a large number of internally displaced people in the CHT as a result of both the civil war and centrally planned and implemented development projects, in particular the government-sponsored settlement programme (between 1979-1980s). The 1997 Accord calls for their rehabilitation and for a task force to be established for this purpose (Clause 1 Section D/Gha).

A Task Force (TF) has been duly formed under the leadership of Dipankar Talukdar, the Member of Parliament for Rangamati district. A JSS representative serves as a member of the TF, but two years after the signing of the Accord, the rehabilitation of the internally displaced indigenous people is still pending. So far, there has been no concrete understanding between the GOB and the CHT leadership on the modalities of their rehabilitation.

A list of the internally displaced peoples (IDPs) is in the process of being compiled. Preliminary enquiries on behalf of the Task Force suggest that the total number of internally displaced persons in the CHT, excluding some 20 *unions* (sub-sub-districts), comprise 130,472 families, out of which 82,020 are “tribal” families and 48,452 are “non-tribal” families – the inclusion of which has raised some controversy.

This question of whether the government-sponsored ethnic Bengali settlers should also be considered as internally displaced peoples has caused friction between the GOB and the JSS. The JSS believes that in accordance with the 1997 Accord, and the definition of internally displaced peoples as agreed upon in a meeting of the Task Force held on 27 June 1998, only those “tribals” who were internally displaced within the CHT between 15 August 1975 to 10 August 1992 are to be

included in this category.²⁴⁸ However, the Task Force Committee chairman, Dipankar Talukdar, has reportedly issued instructions that the Bengali settlers should also be included as internally displaced people. The JSS representative on the committee is said to have protested on the grounds that this falls outside the terms of reference of the Task Force. Recently, the representatives of the JSS and the JRWA have known to have staged a walkout from one of the meetings of the Task Force.

In a statement to the UN, the JSS expressed its serious concern "that the Task Force is attempting to identify the non-indigenous government-sponsored settlers within the category of internally displaced people, violating the letter and the spirit of the CHT Accord. This may lead to the legal recognition of these settlers as residents of the CHT and as legal owners of lands which rightfully belong to the indigenous people."²⁴⁹

Other difficult issues concerning the IDPs relate to the nature of the financial and other measures that are to be undertaken for the economic rehabilitation of the refugees and the question of how to deal with the farmlands belonging to the indigenous people which are now occupied by government-sponsored ethnic Bengali settlers, including both privately registered lands and lands under customary and prescriptive ownership.

In a significant effort towards restoring peace in the CHT and as an indication of its commitment to indigenous issues, the European Parliament has offered its financial assistance in resolving the problem of the non-indigenous settlers *by providing for their resettlement outside the CHT region*. This may very well be the best solution to this problematic issue especially as many of the settlers have indicated their willingness to be repatriated outside the CHT as long as they are provided with adequate financial and other assistance.²⁵⁰ As the Government continues to provide assistance to many of the settlers even to this day, this would not entail enormous extra-budgetary resources and could be envisaged as a practical solution to the problem. Unfortunately, the Government has summarily rejected the offer of assistance from the European Parliament.²⁵¹

Meanwhile, the vast majority of the indigenous IDPs are suffering severe hardships, having little or no access to farming lands, non-farm occupations or to safe drinking water and sanitation facilities, let alone to facilities for healthcare and basic education. In April to May 1998, there were reports by local NGOs of severe malnutrition and deaths from malaria and dysentery amongst the internally displaced people living in remote areas including in the Sajek valley of Baghaichari

Thana in Rangamati district. The malaria raging there is a dangerous strain with fatal consequences. Unfortunately, a malaria eradication programme which was earlier underway in Bangladesh, has been discontinued as malaria is no longer a problem in the lowland (plain) regions of the country, although it continues to be a serious problem in the CHT. Exacerbated by malnutrition, many people have died from these diseases. The condition of children, mothers of infants and the elderly is particularly acute.²⁵²

The World Food Programme of the United Nations has recently initiated a project, with aid from the Canadian and Australian governments, to provide food aid to some of these areas. But these measures are still ad hoc, and longer-term measures need to be undertaken to rehabilitate these people. Urgent measures are also required by way of medical aid, especially since there are few hospitals and health centres in the CHT region, and the few there are face severe shortages of medicines, equipment, doctors and nurses. The international organization, Medecins Sans Frontiers (MSF) is known to have started a healthcare project in areas inhabited by returnee refugees, but details of their nature and extent of work are not readily available as yet. Moreover, although the HDCs have been empowered to deal with health issues under the Accord, this authority has not been effectively transferred to them as yet.²⁵³ Unless such steps are taken, many more deaths could occur during the lean period of spring and early summer, and the overall condition of the affected people will deteriorate rapidly. This could also have severe implications for the entire peace process.

Since the rehabilitation of the internally displaced peoples is inextricably linked to the question of land dispossession by the government-sponsored settlers, this may not be an easy question to resolve, and it is one which may also remain a contentious issue for some time to come. In these circumstances, it is all the more imperative that food and medical aid be continued to be supplied to the internally displaced people(s) until they are all properly rehabilitated in their original homes and lands.

Enlargement of Reserved Forest Areas

The Ministry of Environment and Forests (MoEF) recently issued notifications and administrative orders to enhance the area of Reserved Forests in the CHT. These notifications - most of which were initiated in January 1992 - concern an area of nearly 220,000 acres of lands spread over the three hill districts. About half of these lands have already been

declared Reserved Forests through notifications issued in June 1996 and in April to May of 1998.

This process, although it is for a seemingly laudable aim, namely to increase the forest cover of the region, has severe implications in respect of the basic rights and fundamental freedoms of the people living in these lands. These include, but are not limited to the following:

- The notifications imply that henceforth the title to the lands concerned will be vested in the MoEF. This means that no local authority, including the Regional Council, the Hill District Councils, and the district administrations will have any direct control over or be responsible for the management of these lands;
- These notifications were not given the publicity required under the provisions of the Forest Act of 1927. As a result, a large number of the affected people did not have any opportunity to petition the authorities concerned to have their lands excluded from the boundaries of the proposed Reserved Forests, and/or to have their land claims recognized on the basis of title documents and prevailing customs and usages, many of which are recognized by the Forest Act, the CHT Regulation of 1900 and the CHT Accord of 1997. This was further exacerbated by the unrest prevailing in the region at the time;
- According to a narrow interpretation of the Forest Act, these rights are liable to lapse. If this is allowed to happen the process is likely to dislocate tens of thousands of rural farmers. Most of the affected people are indigenous farmers, as well as a significant number of Bengali rehabilitees from the Kaptai Dam. A delegation of indigenous leaders including Gautam Dewan, ex-chairman of the Rangamati District Council, Raja Devasish Roy, the Chakma Chief, Sudatta Bikash Tanchangya, the member secretary of the recently founded Committee for the Protection of Forest and Land Rights in the CHT, and other leaders from Rangamati and Bandarban met the Minister and Secretary of the MoEF demanding the revocation of the order. When the GOB took no steps to resolve this issue or to meet these demands, the people who will be affected in the designated areas formed themselves into a committee - *Committee for the Protection of Forest and Land Rights in the Chittagong Hill Tracts* - to peacefully resist this programme.

Although the creation of these new Reserved Forests is ostensibly part of an “environmentally friendly” initiative, it is not aimed at protecting

existing forests or creating new and diverse species of forests. Instead, the main purpose is to create production-oriented plantations with a few select species of readily-marketable trees such as acacia, gamar, rubber, teak and species suitable to be used as raw material for pulp-wood. This has been shown by the plantation schemes which were introduced or proposed to be introduced by the Forest Department within the areas concerned. Many of these plantations have only one, or at best, a few selective species of trees, which exacerbate undesirable ecological changes and the loss of wildlife bio-diversity in violation of the Convention on Biological Diversity that has been ratified by Bangladesh.²⁵⁴

The Committee for Forests and Land Rights organized rallies and sent memoranda to the Government. Some of its members also met the minister concerned, Sajeda Chowdhury, to state their case and she assured them that the Government would not carry out any afforestation programmes which involves evicting people.²⁵⁵ At the same meeting, Dipankar Talukdar, the MP for Rangamati and chairperson of the Task Force on Refugees, acknowledged that a revocation of the notifications will be necessary in order to effectively protect the rights of the people concerned.²⁵⁶

As Raja Devasish Roy, the hakma Chief points out: "In the case of the lands already declared as reserved under Section 20 [of the Forest Act] the Government is still free to revise the arrangements with regard to claims in accordance with Sections 15, 18 and 22. Alternatively, where the lands concerned include vast areas of settled lands (whether or not recorded in the district registries), the Government can declare that the area is no longer reserved in accordance with Section 27 of the Act. As for the lands that have not already been reserved in accordance with section 20, the entire process may be stayed, pending proper inquiries."²⁵⁷ So far no such measures have been taken.

Leasehold and Rubber Plantations

The Accord provides that where lands were leased out to non-indigenous persons or non-residents for rubber or other plantations and where these lands were not utilised for such a purpose for more than ten years, then the leases will be cancelled.²⁵⁸

This provision is especially important to safeguard the rights of many indigenous people, especially in Bandarban and Khagrachari districts, where influential people with close connections to the Government

have taken over lands previously used and occupied by indigenous peoples. A recent report from the CHT states that more lands may be leased out to non-residents for rubber plantations²⁵⁹ and suggested that many leases had already been made out to non-residents, including relatives of influential business people and civil servants.²⁶⁰ There are also reports that indigenous farmers employed on government owned rubber plantations have been suffering hardships due to a decrease in the international price of rubber, among other reasons.²⁶¹ In these circumstances, it seems that the 1997 Agreement is being clearly ignored in its letter and its spirit.

Land Survey

The greater part of the lands of the CHT has never been surveyed in detail. Since the 1980s, the Government has stated its intention to undertake a cadastral survey in order to provide a greater degree of clarity on the question of land ownership and competing land claims. In 1992 a proposal to start a survey was strongly resisted by the indigenous peoples, who believe that this is another ploy to legalize the rights of the ethnic Bengali settlers, who are illegally occupying and in possession of vast areas of lands the indigenous people claim is rightfully theirs.²⁶² The indigenous peoples also believe that this will serve to weaken their custom-based rights. These are valid grounds when one takes into consideration the fact that many of the indigenous peoples do not have land documents, a situation further exacerbated by the burning down of the land records office in Khagrachari.

The Accord provides for land survey to be conducted. It very clearly states that this is to be initiated only after full implementation of the Accord, and the rehabilitation of the indigenous refugees and the internally displaced indigenous people has been completed.²⁶³ It was also agreed in the Accord that the land-related disputes would be resolved, and that the concerned lands would be duly recorded in the names of the indigenous people to ensure the protection of their land rights²⁶⁴.

According to reports, the Government has allocated a total of BD 1,280 million Takas (25.5 US\$) for the land survey.²⁶⁵ However, it is not known when the survey will be started. A well-known writer on the CHT has expressed fears that if a survey is conducted, this may lead to the denial of the indigenous peoples' custom-based land rights,²⁶⁶ many of which are not recognized by national law, and some of which are only partially recognized as stated earlier.

If the land claims of the indigenous people are recognized – whether based upon customs or otherwise - then the survey may not harm the interests of the indigenous people. However, if the survey does not acknowledge such rights as at least equivalent to rights based upon written title, then many of the indigenous people’s customarily held lands may be lost forever to them. Given the prevailing situation in the CHT where the land commission has yet to be established, and the refugees and internally displaced people have not yet been rehabilitated in a full and proper manner, any land survey conducted now will further complicate an already complex and highly volatile situation in addition to having adverse and long lasting repercussions on the land rights of the indigenous Jummas.

Conclusion

Two years after the Accord was signed, its implementation has been marked with delays and difficulties. Although a three-member implementation committee has been established - composed of a senior government official (the Chief Whip in Parliament) as chairman, the JSS chairperson, Mr. J.B. Larma and the chairperson of the Task Force, Dipankar Talukdar - the process of implementation of the Accord has been slow and a cause of grave concern. During this process, the situation has sometimes turned volatile with violent incidents taking place between indigenous and non-indigenous groups, as well as between pro and anti-Peace Accord activists, and a number of people have been killed. In December 1999, in Bandarban, J.B. Larma described the situation in the CHT as deteriorating rapidly. He further stated that the local administration was not functioning smoothly, and that the government was not taking any effective steps to improve the situation.

There are many stake-holders involved in this process, many with conflicting interests; all do not share the same aim of bringing peace and prosperity to the CHT. As mentioned earlier, an interim Regional Council has only recently been established and the three Hill District Councils have not yet been fully empowered as envisaged in the Accord. This has been a major cause of concern for the indigenous peoples especially since this includes the non-transfer of the vital issue of land and resource management to the Councils, as well as that of law and order, among other matters.

At the installation ceremony of the interim Regional Council on 27 May 1999, Mr. J.B. Larma, the JSS chief and chairman of the Regional Council asked for assistance, both nationally and internationally in

implementing the Peace Accord. He demanded that the government immediately withdraw all non-essential army camps, as under the provisions of the Accord, and that all non-permanent military camps be dismantled and withdrawn from the CHT. (The decommissioning of the Shanti Bahini took place soon after the Accord was signed.)

Since the signing of the Accord, there is no justifiable reason for the continued presence of the army in the Hill Tracts, and their remaining put has the effect of undermining the Peace Accord considerably. As J.B. Larma, the Regional Council chairperson, observed at the meeting in Bandarban, in a situation similar to the pre-Accord years, the Army remains in control of law and order, as well as of the civil administration system of the CHT (Bandarban, December 1999). Reliable sources indicate that there are some 450 army camps still remaining in the CHT.

On the positive side, as of mid-1998, the CHT was opened to foreigners and special permission is no longer required to enter the area although the national authorities do need to be notified of the visit. There are also a number of civil society initiatives taking place in the CHT including a seminar on development in the region organized in December 1998 which identified the modalities for developmental activities to be undertaken in the Hill Tracts. Participants included representatives of the government, the JSS, the traditional authorities, mainstream political parties including the Awami League, the BNP and the Communist Party of Bangladesh, and NGOs among others. A declaration adopted at the meeting identified free and informed consent of the people concerned as a pre-requisite for all development projects, and called for a total ban on logging.

In terms of the approach of donors, UNDP has taken the lead in mobilizing international support for the CHT, and a needs-assessment mission conducted in April 1998 identified components for future activities including agriculture, primary education, technical and vocational education, health, infrastructure and communication. However, a number of donors including the European Commission, have indicated their reluctance to commence technical co-operation activities in the CHT before there is a full and effective implementation of the Peace Accord. The indigenous peoples, including the JSS and other leaders, agree with this position as they believe that any development projects and programmes undertaken under the present circumstances will not be of benefit to the indigenous peoples, or can be formulated, implemented or evaluated with their full and meaningful participation. Their decision is to wait until participatory development processes can be implemented and, as a JSS representative has said: "We waited

over 20 years for development, a few more years will not harm us.”

As Raja Devasish Roy makes clear: “The 1997 Accord is a very crucial step towards the restoration of autonomy and self-rule in our region, and towards the recognition of our cultural identities and our land and resource rights to our ancestral domain. However, it is vital to bear in mind the limitations of the likely impact of the Accord on our resource rights, both because of the matters not directly addressed in the Accord, or adequately enough, and also because of difficulties in the process of implementation of the Accord.”²⁶⁷

Therefore, it is important to analyze the land rights of the indigenous peoples of the CHT within the context of their customary laws including those recognized either partially and wholly in national legislation. The Accord addresses many of these rights, however it is necessary to see this question in a larger framework, that of indigenous law and custom, and of natural law and justice. Thus it is hoped that this report, along with its update, will advance the cause of the indigenous peoples of the CHT in their search for recognition and restitution of their land rights, both past, present and future.

ANNEX

PATTERNS OF DISPOSSESSION: CASE STUDIES

As a result of various development policies implemented in the Chittagong Hill Tracts, in particular the Kaptai hydroelectric project and the Settlement Programme, thousands of indigenous peoples have lost their traditional lands. This chapter provides details of selected case studies indicating the range and systematization of this phenomenon. It is pertinent to indicate that nearly all the indigenous landowners have legal title to the disputed lands with land records including registration certificates and tax receipts to prove ownership. Annexed to the report is a list of cases provided by the CHT Jumma Refugees Welfare Association (see Annex for further details).

Biraj Mohan Dewan

This case study demonstrates the historical process of marginalization of the indigenous peoples of the CHT commencing with their withdrawal from the plains district of Chittagong to the hills, through the construction of the hydroelectric power plant at Kaptai to the settlement programme of the 1970s.

Specifics of lands owned: Baradam village, 61 Maischari Mauza,
Naniachar
Present address: Naniachar Thana, Rangamati

Process of Dispossession

Biraj Mohan Dewan's ancestral home was in Rajanagar Union, Rangunia, Chittagong District near the present border with the Chittagong Hill Tracts. Rajanagar was the headquarters of the Chakma Chiefs for more than two hundred years until the late 19th century, when the Chakmas were forced to evacuate this area as a result of increasing encroaching and harassment by plains people. However, some families did not follow the exodus into the hills and remained in Rajanagar, although by 1950 the number had dwindled to two families, namely the brothers Mohini Mohan and Biraj Mohan Dewan.

In 1958, Biraj Mohan Dewan (BM Dewan) left his ancestral home

in Rajanagar and settled in Baradam Village, 61 Maischari *Mauza*, Naniachar *Thana* (Police Station), Rangamati District. He was in the process of purchasing one acre of paddy land when the Kaptai reservoir flooded the area. The owner received some compensation for the land, but proceeded to continue with the sale and transferred the land to BM Dewan.

With the completion of the Kaptai Dam in 1961, B.M. Dewan and his family were forced to relocate to an elevated area on a hill top nearby. They built a house there. With the initialisation of the government's horticulture project B.M. Dewan and his family participated in the project and grew fruit on 11 acres of land including mango, cashew nut, jack fruit and pineapple. Title to this land was by settlement and a lease was registered in his name with the relevant authorities. In addition to the fruit farm, the family also cultivated one acre of fringe land. Fringe lands are those which emerge from the lake during the dry season.

From the farmlands (also called grove lands) B.M. Dewan sold three acres to another indigenous farmer. In the late 1970s, B.M. Dewan's son Debapriya bought seven acres of grove-land adjacent to his father's lands from some neighbours, namely Surya Mohan and his brother Ananda Mohan Chakma. There was no formal transfer of title in his favour although the lands were handed over to Debapriya Dewan, and he had exclusive use and possession.

Between 1981 to 1982, a large number of families from the plains districts were settled in Maischari *Mauza* near the lands of Biraj Mohan and his son Debapriya. Initially the plains families were placed in make-shift camps. However, survey officials known as *amin* and *kanungo* - arrived soon after to measure the *mauza* lands, including both B.M. and Debapriya Dewan's lands. As a result, approximately six acres of land from B.M. Dewan's lands were allocated by national authorities to two settler families.

However, as time went by the settler families began to gradually encroach on the remaining lands of the Dewan family, including the lands Debapriya Dewan had purchased from his neighbours. They began to expand their area of occupation by fencing and forcibly occupying parcels of adjacent lands. This was complemented by intimidation and harassment of the women members of B.M. Dewan's family.

Ultimately Biraj Mohan Dewan and his family were forced to leave

their lands.

Legal Action

Biraj Mohan Dewan and his son Debapriya took the following measures to claim back their lands:

Survey officials. They lodged a complaint against the illegal transfer of their lands to the settler families with the survey officials. No action was taken to have the six acres of land returned to them.

Indigenous authorities. They met with the local *Karbari*, Mr. Basanta Kumar and the Headman of 61 Maischari *Mauza* to complain against the arbitrary allotment of their land to the settler families. The *Karbari* and the Headman informed them of their inability to take effective action against the government officials and expressed frustration at their helplessness.

Military authorities. As a last resort, Biraj Mohan and his son Debapriya went to address the military authorities in a nearby camp called Islam-pur²⁶⁸ Army Camp. They met with the camp commander, a major to whom they submitted a written request to have their lands restored to them. The army officer advised them to forget about their lands, which had been allocated to destitute people - 'poor and helpless' settlers. Instead, he suggested they should find some unclaimed common (*khas*) lands, and offered to assist them in meeting the costs of the settlement.

Debapriya Dewan and his family did not initiate civil proceedings to have their lands returned to them, or to formalise their rights to inherit the lands owned by the father. Given the present circumstances, they believed that the most they might have got was a bare title deed to Biraj Mohan's lands which would have been meaningless without possession. The same was true for the lands he acquired from the neighbouring farmers Surjya Mohan and Ananda Mohan.

With reference to instituting civil proceedings against the settlers, this is not a viable option in most cases as most indigenous people have access to little financial and technical resources. Civil litigation is an expensive and time consuming process, as well as being an unfamiliar system to most indigenous people. In addition, many of them lack faith in the national legal system which they believe to be biased in favour of the settlers.

Conclusion

The Dewans moved to Naniachar Bazaar, initially taking shelter with relatives. Biraj Mohan Dewan died in 1990 in his daughter's house as he was unable to support himself without any income from his lands. His son, Debapriya Dewan has no source of income, or possibilities for gainful employment at the age of 60-odd years with limited transferable skills. His earning potential is therefore limited, and he is dependent on the charity of his relatives for his survival. He presently lives in rented accommodation in Naniachar Bazaar.

Their lands are all occupied by settlers. They did not receive any financial compensation for their lands, although the relevant authorities were informed of the problem. They were also unable to locate any alternative lands for resettlement, and it is doubtful whether the military authorities would have provided financial assistance in meeting re-settlement costs as there is no available information indicating they had done so in any other instance.

Padma Sobha Chakma

Ms. Padma Sobha Chakma was a refugee in Tripura State, India, from 1986 in the wake of violent conflict in the CHT. She returned in 1994 under a government-sponsored repatriation programme to find that her lands had been allocated to settler families. She filed petitions with the state authorities and with the indigenous authorities for restitution of her lands, but has not been successful in regaining possession of her lands.

Specifics of lands owned:	2.50 acres of paddy lands under Holding
	No. 125
Location:	Kalachan Mahajan Para, 30 Bara Merung Mauza, Dighinala Thana, Khagrachari Distr.
Present Address:	Dighinala

Process of Dispossession

Padma Sobha Chakma is in her forties and a widow. She used to live

in Kalachan Mahajan Para, 30 Bara Merung mouza, Dighinala thana, Khagrachari district where her late husband, Indu Bhushan Chakma, was the registered leasee of 2.50 acres of paddy lands.

She fled to India during the ethnic tension of 1986 when many indigenous people lost their lives. She remained in refugee camps in India from 1986-94.

Ms. P.S. Chakma returned on 27 July 1994 under a government sponsored repatriation agreement to find that the family paddy lands had been taken over by Bengali settlers named Mohammed Nazrul, Marzad and Kala Mujibur. Under the terms of the repatriation agreement the returnee refugees were promised restitution of their lands.

When Ms. Chakma informed the illegal occupants that the land rightfully belonged to her family, they produced documents which they claimed were title documents to the land and had been given to them by the government during the Settlement Programme.

Legal Action

On 14 August 1994, Ms. Chakma filed a petition with the Thana Nirbahi Officer (TNO), the senior-most government officer at the *thana* (police station) level, for recovery of her land.

No action was taken by the TNO.

On 14 February 1995, Ms. Chakma filed a petition with the Deputy Commissioner requesting the restitution of her family lands. She also stated that the illegal occupants of her land, namely Mohammed Nazrul, Marzad and Khala Mujibur, had shown title documents as proof of their illegal possession. She believed these documents to be forged.

Soon afterwards, the Chakma Chief, Raja Devasish Roy came on tour to Dighinala. Ms. Chakma appealed to him for assistance. By Memo No. 23(C) dated 12 March 1995, the Chakma Chief wrote to the Deputy Commissioner advising prompt action for the return of her land.

No action was taken.

Conclusion

At the time of writing Ms. Padma Sobha Chakma had not recovered her lands.

Prabodh Chandra Dewan

This is a case of land dispossession first by the Kaptai reservoir, and then as a result of the settler programme. Complaints filed with the civil authorities have had no results.

Specifics of lands owned: Holding No. R-2, 148 Bushanchara

Mauza, Barkal Thana

Present Address: Rangamati

Prabodh Chandra Dewan is the son of Chandra Mohan Dewan, and became headman of 148 Bushanchara Mauza in 1960. He was also elected as Chairman of the Bushanchara Union Council, a local municipal body, for a few terms. He is about 74 years of age, and has two children.

Process of Dispossession

Pre-1960, Prabodh Chandra Dewan and three of his brothers lived along the banks of the river Karnaphuli in Bushanchara Mauza in Barkal. They were all farmers and owned paddy lands. With the construction of the Kaptai dam, these lands were submerged and P.C. Dewan and his family had to move their houses to an elevated area 30 to 40 feet up a nearby hill.

With the submersion of his river-side paddy lands Prabodh Dewan was allotted about 15 acres of grove land, i.e. fruit growing lands, under Holding No. R-2. He planted pineapple, mango and other fruit trees. He also had two acres of bumpy lands, i.e. gently sloped lands that could be used for agriculture. In addition, Prabodh Chandra also farmed the surrounding low-lying lands and planted paddy on them during the low water season. These lands, classified as fringe lands, amounted to about 10 acres. All these lands were recorded in his name with the relevant authorities and he paid annual taxes for them on a regular basis.

In 1980-81, the office of the District Extension Officer of the Agriculture Department acquired 0.50 acres of his grovelands.

In 1982, 14 plains families were settled on the rest of his grovelands.

Legal Action

Mr. P. C. Dewan appealed to the Deputy Commissioner (DC) of the district, Mr. A. Malek, upon which Case No. 1 of 1982 and Case No. 2 of 1982 were initiated in the Court of the Deputy Commissioner.

On 11 May 1982, a report on the matter was submitted by a revenue official. However, the report was not considered to be sufficiently detailed, and P.C. Dewan filed a more detailed application. This had no results.

On 13 June 1983, he filed another petition with the Deputy Commissioner. On the basis of this complaint the D.C. issued written instructions to the Upazilla Nirbahi Officer - UNO²⁶⁹ - head of the administrative unit of Barkal Thana to return P.C. Dewan's lands to him.

The UNO instructed the land survey officers attached to his office to demarcate the relevant land and hand over possession of P.C. Dewan's lands to him.

The survey officials (*kanungos*) included one *kanungo* from the UNO's office and another one on special deputation, the rehabilitation zone *kanungo* who was Settlement Programme-related officer. The *kanungos* purported to officially hand over some lands to Mr. Dewan.

He rejected their offer. The lands they were offering him were not his lands. In addition these alternative lands were situated well below the limit of 120 feet mean sea level (MSL), and according to local land law lands below 120 MSL cannot constitute grovelands.

On 4 August 1985, he filed another complaint with the Thana Nirbahi Officer (ex-UNO). The TNO wrote to the district *kanungo* instructing him to hand over the possession of P.C. Dewan's lands to him.

By his report dated 11 September 1985, the District *kanungo* explained that since the concerned lands contained houses and trees belonging to settler families, he could not give a certain date by which he could hand over possession to P.C. Dewan. He further advised that it was not possible to fix a firm date for return of the lands before a list of the concerned houses could be made and the occupants provided with

notices to vacate such lands.

The matter remains in abeyance and no further action has been taken, either to serve notices to the settler families to vacate P.C. Dewan's lands, or any other action to return his lands to him. In addition, no final report has been submitted on the matter to the best of Prabodh Chandra Dewan's or his family's knowledge.

In 1984 the *Shanti Bahini* made a series of attacks on nearby settler villages and security camps. In retaliation, the security forces in conjunction with the settlers attacked many indigenous villages. Prabodh Chandra left his home and took shelter in the town of Rangamati.

Conclusion

Prabodh Chandra Dewan lives in Rangamati in a small house he was allowed to build on a relative's land. In 1983 he resigned from the headmanship of the Bhushanchara *Mauza* in frustration. He has not taken any further action to have his lands returned to him, as he could no longer afford the incidental expenses of petitioning the Deputy Commissioner and the Thana Nirbahi Officer. In addition, he no longer has any faith in the willingness and the ability of the civil authorities to restore his lands to him. His situation now is far removed from his earlier position as one of the wealthiest and most powerful men in his *mauza*.

Nirupam Chandra Dewan

Nirupam Chandra Dewan is the younger brother of Prabodh Chandra Dewan. His case is unique in being the only known case of land dispossession by the settlement programme which was forwarded to the Special Affairs Division of the Prime Minister's Cabinet.

Specifics of lands owned: 148 Bushanchara *Mauza*, Barkal Thana
Present Address: Rangamati Town

Nirupam Chandra Dewan is the present headman of 148 Bhushanchara *mouza* under Barkal Thana, Rangamati Hill District. He is about 63 years old and is the father of nine children and three stepchildren, i.e. a total of 12 children. In 1987, N.C. Dewan became the headman when his brother resigned.

Process of Dispossession

Nirupam Chandra had rice-fields in the fertile valley of the Karnaphuli river in Barkal. When the Kaptai Hydro-Electric Dam flooded the low-lying valleys, he was forced to move to hilly areas. He took settlement of 12 acres of grovelands (hilly lands) which were registered in his favour with the relevant indigenous and national authorities.

He invested financial and physical resources in developing these lands and had a fruit plantation over much of these lands. A small part of his lands did not have many fruit or other trees because he could not afford to invest a small amount of money at one time. He also cultivated the surrounding fringe lands and grew rice there every year when they emerged during the dry season when the water level of the reservoir is low.

1981-82 Bengali settlers were re-settled in Bhushanchara as well. Soon after their arrival, a portion of his registered land which was lying fallow was taken over as part of the rehabilitation scheme without any prior notification to N.C. Dewan, and a market and a family planning clinic established on this land.

Furthermore, 29 newly-arrived plains families were re-settled on N.C. Dewan's lands. This included his grove-lands where he had fruit and other trees growing, as well as the fringe lands he used for growing rice to feed his family.

Legal Measures

Nirupam C. Dewan petitioned the civil authorities against such arbitrary action. On the basis of his complaint he eventually received some compensation after 0.85 acre of his lands were formally acquired for the bazaar and another 0.85 acres for a health complex.

However, he did not receive any compensation for the lands occupied by the settlers.

In 1987 he again filed a complaint with the then Deputy Commissioner, Mohammed Shafiqul Islam, for the restitution of his lands. An enquiry was initiated on his complaint but the report provided an inaccurate account of the dispossession of his lands. Based on this report, his case was rejected.

On 7 January 1994 N.C. Dewan again filed another petition with the district authorities for the return of his lands. There was no response.

On 19 July 1994 he sent a petition directly to the Secretary, Special Affairs Division, Prime Minister's Secretariat, the highest level policy-making body responsible for CHT matters.

On 3 August 1994 the Special Affairs Division wrote to the Deputy Commissioner of Rangamati requesting him to take the necessary action on the matter (Memo No. Spec. Aff. Div (SM) 33/91/849 dated 3.8.94)). When no action was taken by the DC, N.C. Dewan again wrote to the Special Affairs Division to remind them of his case.

By report dated 4 January 1995, the Deputy Commissioner, Rangamati, Mr. Mohammed Hassan replied to the Special Affairs Division informing them that if N.C. Dewan's lands were to be returned to him, this would require the cancellation of the settlements issued to the non-hillmen settlers occupying the relevant lands, in addition to the provision of financial assistance for their relocation elsewhere, including for the construction of new houses.

N.C. Dewan was asked by the authorities whether he would agree to give up his rights to his lands in return for: (a) alternative lands elsewhere; or (b) compensation for his lands.

On 18 February 1995, N.C. Dewan wrote to the Deputy Commissioner, Rangamati and suggested that instead of offering him alternative lands or monetary compensation for the loss of his lands, it was the settlers who were illegally occupying his lands who should be offered the options of choosing between alternative lands elsewhere or financial compensation.

As of December 1995 Nirupam Chandra Dewan has received no further response regarding his lands from the Deputy Commissioner, Rangamati, from the Special Affairs Division in Dhaka or any other governmental agency.

Conclusion

Nirupam Dewan was forced to leave his home and his lands and now lives in Rangamati in a small cottage next door to his brother

Prabodh Chandra Dewan. The land belongs to family members. He is among the internally displaced in the CHT, and does not have a steady source of income to meet the needs of his family. He has little or no access to alternative income-generating opportunities.

Paithuma Marma

Paddy lands taken over by settlers. On her petition, the local Thana official ordered the restoration of her land. By a second complaint, the local survey official was deputised to hand over possession. She has not been able to repossess her lands.

Specifics of lands owned: 5 acres of 1st class land (paddy land)
under Plot No. 198, Holding No. 23,

Khatian No. 38

Boundaries: Officially recorded as: north-Mong
Hla Prue's paddy land; south-Mong
Khieu's paddy land; east-Mong Khieu;
west-stream

Location of lands: 211 Denchari *Mauza*, Manikchari
Thana, Khagrachari District

Present Address: Fakirnala village, Denchari *Mauza*,
Manikchari *Thana*

Process of Dispossession

Paithuma Marma and her husband Thoai Aung Prue Marma had their home in Fakirnala village. Her family has lived there for many generations. She is the recorded owner of the above-mentioned farmlands (plough lands). In addition, she also has possessory rights over one acre of the adjoining land for which she never obtained formal settlement or lease. The lands are prime paddy land and are located about one kilometre away from her house.

In 1980-81 Bengali settlers were brought into the village and resettled near her paddy lands. In 1981-82 a settler named Yusuf Ali took possession of 2.28 acres of Paithuma's paddy lands. Out of fear, she did not do anything to recover possession of her land.

For nearly three years Ms. P. Marma and her husband were too intimidated to take any action. Finally in 1985, they submitted a petition to the Upazilla Nirbahi Officer or UNO (now TNO).

The UNO ordered Yusuf Ali to vacate P. Marma's land but he refused to do so. No action was taken by the authorities to ensure compliance with the UNO's order. Yusuf Ali remained in possession of the indigenous family's lands.

In 1990, Ms. Marma filed another petition with the UNO. The senior-most local survey official, the *kanungo*, demarcated the lands in order to hand them over to her.

However, Yusuf Ali refused to obey the order of the UNO to enable Ms. Marma to regain possession of her lands. The local officials were aware of this but did not take any measures.

Conclusion

Ms. P. Marma has not had her lands returned to her, and the settler Yusuf Ali continues to cultivate the above plough lands. Ms. Marma has legal title, recognized by the authorities, both national and indigenous, yet no measures have been taken to ensure she has effective possession and control of these lands. The national authorities will not take the necessary steps to assist her, and the indigenous institutions no longer have the power to enforce their authority. Thus, although the bare legalities were observed, Paithuma Marma is still without her lands and the situation is the same as when Ms. Marma first petitioned the authorities in 1985.

Nihar Bindu Chakma

The case of Nihar Bindu Chakma, headman of 30 Bara Merung Mauza, is an example of the continuous intimidation and harassment indigenous people are subjected to by the settlers forcing many of them to leave their lands and become internal refugees within the CHT. This case is even more significant in that it was brought to the attention of the General Officer Commanding, Chittagong Cantonment.

Specifics of lands owned: 5 acres of grove land (Holding No. 1),
 2 acres of fringe land (Holding No.
 48); 6.64 acres of agricultural land

(Holding No. 66), and 9.82 acres of
agricultural land (Holding No. 38) in
Tarabanya *Mauza*

Location: 30 Bara Merung *Mauza* and 54
Tarabanya *Mauza*, Dighinala *Thana*,
Khagrachari Distr.

Process of Dispossession

Nihar Bindu Chakma, son of Rai Chand Chakma (deceased), of 30 Bara Merung *Mauza* became the headman of the *mauza* when his father died. In addition to being the headman N.B. Chakma was an influential person in the Khagrachari District.

By local standards, N.B. Chakma was a wealthy landowner (see details above). He owned a number of land parcels including agricultural lands, fringe lands and a teak plantation.

In 1978, the Bangladesh Army came on an operation to Ghulchhari village in Bara Merung *Mauza* and destroyed his two-storied house. They also cut down and removed teak trees from his plantation. In 1979, Rangamati unable to stay there any longer, he fled to.

In 1983, plains settlers belonging to the group under Leader Rezaur Rahman took over N.B. Chakma's 6.64 acres of paddy lands. According to reports, the settlers were issued title deeds to these lands by the government.

Legal Proceedings

N.B. Chakma appealed to the General Officer Commanding (GOC), 24 Infantry Division, Bangladesh Army, Chittagong, who is the highest ranking officer in charge of the CHT and stationed in the nearby town of Chittagong.

The GOC told N.B. Chakma that he had no right to these lands as he had received compensation for the lands he had lost in the Karnaphuli reservoir in 1960.

N.B. Chakma provided evidence of his continuing possession of the above lands and a standing order of the government stating that land-

owners could claim preference over others if the lands lost in the Kaptai Dam surfaced during the low water season although they may have received compensation for such lands. N.B. Chakma's lands did emerge when the waters of the reservoir were lowered, and he had been cultivating these lands for years. In addition, the compensation, if any, which was paid to some of the indigenous landowners, was far short of the real value of the lands (see under Section II Chapter 5 for details).

The GOC gave him a nominal sum of money as 'compensation'. No further action was taken to have his lands returned to him.

Subsequently N.B. Chakma's teak plantation was also taken over by the settlers. He appealed to the district administration but to no effect.

Conclusion

Nihar Bindu Chakma lives in Rangamati Town now. He has lost all his lands to the settlers and is resigned to the fact that he will never regain possession of his lands.

Dema Chakma

Dema Chakma was an indigenous farmer with land in Kaokhali. His lands were taken over by settlers after a violent attack, in the aftermath of an armed attack by the army. Dema Chakma could not get back his ancestral lands and now lives in another village far from his original home.

Specifics of lands owned: Holding No. 159, Khatian No. 236,
 Plots Nos. 2608 and 2609

Location of lands: 98, Kachukhali *Mauza*, within Kachukhali
 Thana (Police Station)

Present Address: Barmachari village, 94 Nabhanga
 Mauza

Process of Dispossession

Dema Chakma, son of late Ratna Mani Chakma, is about 56 years old and had been living in Rangipara village within 98, Kachukhali *Mauza* for many generations. He was the registered owner of 1.27 acres of paddy lands under Holding No. 159, Khatian No. 236, Plots No. 2608 and 2609.

Since 1978, Bengali migrants started settling down in various places within Kaokhali *Thana*, usually on waste land and road-side land. However, soon afterwards, the way of life in Dema Chakma's village changed drastically. Before, life had been safe and peaceful, but after the arrival of the settlers theft and burglary became commonplace occurrences. Often, rice was harvested from the paddy fields belonging to the indigenous farmers.

Kalampati Massacre.²⁷⁰ On 25 March 1980, soldiers acting under the instructions of the army major of the Kaokhali Camp, ordered all the indigenous people from the surrounding areas to gather near the Pua-para Buddhist Temple within 96, Kalampati *Mauza*, Betbunia *Thana*. As it coincided with a Buddhist holy day, many of the local people had already gathered in the temple grounds. Around 9:00 a.m. the army major ordered the indigenous people gathered at the temple to assemble outside. Soon afterwards, the soldiers opened fire on the assembled crowd. Many died, while others fled.

In the aftermath of this event, many Bengali settlers started attacking the local people, mainly Chakma and Marma. Dema Chakma did not go to the temple that day but remained in his house. Some settler men (namely, Mohammed Syed, son of Tarab Ali; Mohammed Hashem Ali and Mohammed Hanif Mridha, both sons of late Sarat Ali; and Mohammed Abdus Salam, son of Bazlur Rahman) came into his house with *daos* (knives) and attempted to attack him. Dema Chakma and his family somehow managed to escape to nearby Barmachari village within 94, Nabhanga *Mauza*.

A few months later Dema Chakma returned to his house and found that Mohammed Syed Ali, one of his attackers, had taken over his house and his farmlands.

Legal Action

Dema Chakma is poor and had no idea how to get back his lands. He took no legal action.

Conclusion

Dema Chakma went back to Barmachari village where he barely manages to survive. He earns a little money by hard manual labour, and is

mainly dependent on the support and assistance of family and friends for his living expenses.

Chai Thoai Prue Marma

Chai Thoai Prue Marma had registered paddy lands and other lands (both flat and sloping) which were taken over by settlers. He applied to the local authorities for restitution of his property. Only known case of criminal proceedings being initiated.

Specifics of lands owned: 3 acres of land, Holding No. 294
Location of lands: Alikadam Bazaar Para, 288
Alikadam Mauza, Bandarban
District

Process of Dispossession

Chai Thoai Prue Marma is about 35 years of age and lives in Alikadam Bazar Para where his family has been living for many generations. He is a small trader, a profession not very common amongst the indigenous people, and owns 3 acres of 2nd class land where he used to grow rice and vegetables.

Migrant families from the plain districts were settled in an area adjacent to his lands during the settlement programme. In 1993, one of these settlers - Abu Mia by name - began to gradually encroach on his land by various methods until he finally took over possession of one acre of C.T.P. Marma's lands.

Legal Action

In 1993, C.T.P. Marma initiated criminal proceedings against Abu Mia in the local court and filed a case against him (C.R. Case No. 6/93).

There were no results and the case continued.

C.T.P. Marma then filed a suit for eviction in the civil court - Eviction Suit No. 118 (d) of 1993-94 in the Court of the Deputy Commissioner, Bandarban.

Conclusion

To date the cases have not been decided. Chai Thoai Prue Marma is finding it difficult to afford the legal fees and incidental expenses, as these cases are expensive and time consuming. Given the present circumstances, it is doubtful whether he can continue with the legal proceedings.

Kalachan Chakma

Kalachan Chakma's case history traces land dispossession from the Kaptai Dam, to the settlement programme and related ethnic violence. Kalachan Chakma fled to India, and returned to the CHT on the basis of a repatriation package guaranteed by the Government of Bangladesh.

Name of Father:	Charan Khan Chakma
Specifics of lands owned:	B-Form No.90, Holding No. R-15
Boundaries:	North - Shashi Chandra, south - Chandra Dhar, east - Karnaphuli river and west - Parbuachari stream
Location of lands:	Dhanibagh Chara, 148 Bhushanchara <i>Mauza, Barkal Thana</i>

Process of Dispossession

Kalachan Chakma's family were displaced from their ancestral home in Dhanibagh Chara as a result of the Kaptai Dam.

When their lands were flooded by the reservoir, K. Chakma took settlement of four acres of grove land in the same *mauza* but on higher ground. He grew banana, mango and jack fruit on his lands and also had a *gamar* (*Gmelina arborea*) plantation. *Gamar* is a fast-growing tree that can be easily marketed as timber.

In addition, K. Chakma also had a renewable lease on two acres of fringe land for which he paid taxes to the government through the indigenous authorities.

Between 1982 and 1983, K. Chakma's lands were forcibly taken over by plains settler families. These families were brought into the CHT by

the government and settled on lands belonging to indigenous people, including on K. Chakma's lands although he had legal title and the documentary evidence to prove his claim.

K. Chakma's rights to the lands were disregarded, and his family had no other option but to move away from their ancestral lands. They moved further into the hills.

In 1984, in the aftermath of violent attacks against the hillpeople, including at Langadu and Matiranga, K. Chakma and his family fled across the nearby border to Mizoram State in India. They lived in a refugee camp in Mizoram for about two years in terrible conditions with inadequate rations and sanitation facilities and poor health.

Repatriation. In 1986-87, representatives of the Government of Bangladesh began to make arrangements for the repatriation of the CHT refugees to Bangladesh. The then Deputy Commissioner, Mohammed Shafiqul Islam, assured K. Chakma and his fellow refugees that their lands would be returned to them upon repatriation to Bangladesh. In addition, the government promised financial and other assistance for a period of six months to facilitate their rehabilitation.

On his return to the CHT, Kalachan Chakma received some assistance including 800 Taka (equivalent to US\$ 20.00) and about 300 kilograms of rice. There were no other rehabilitation benefits provided and, more significantly, his lands were not returned to him as promised under the terms of the repatriation agreement.

Legal Action

None.

Conclusion

K. Chakma's lands have not been returned to him. In January 1987 K. Chakma and his family moved to Chadara Chara village within the jurisdiction of 149 Guichari *Mauza*, some miles away from his ancestral home.

K. Chakma does not have any training or skills which will enable him to secure a job. He survives by *juming* (shifting cultivation) and by

selling firewood on the market - both of which are prohibited in the reserve forests and restricted in the protected forest areas. He occasionally works as a daily labourer on nearby farms.

Mong Hla Thoai Marma

This is another case demonstrating the pattern of land take-over by settlers from the plains.

Specifics of lands owned: 5.13 acres of 1st and 2nd class land,
Plots No. 1919-25 under Khatian
No. 195, 212 and 953.
Location of lands: 287 Toin *Mauza*, Alikadam *Thana*,
Bandarban District
Present Address: Mongcha Para, 288 Alikadam *Mauza*

Process of Dispossession

Mong Hla Thoai Marma is about 40. His father was the late Kyaja Prue. His family have been living in Nijapara within 287 Toin *Mauza*, Alikadam thana, Bandarban district for many generations.

M.H.T. Marma owned a total of 5.13 acres corresponding to Plot Nos. 1919, 1920, 1921, 1922, 1923, 1924 and 1925 under Khatian Nos. 195, 212 and 953. This land was used for growing rice and vegetables.

After migrants from the plains were settled in his village by the authorities, they gradually began to take over all his agricultural lands by encroachments, fencing, intimidation etc.

Legal Action

M.H.T. Marma first appealed to the Union Council Chairman at the local level. The Chairman instructed the illegal occupants to vacate MTH Marma's lands. They refused to do so.

M.H.T. Marma then initiated a case in the Deputy Commissioner's Court (Miscellaneous Case No. 190(d) of 1990-91).

Although M.H.T. Marma produced the necessary documentary evi-

dence such as land records, registration deeds, tax receipts etc., the court found against him.

M.H.T. Marma then filed another case at the Deputy Commissioner's Court for judicial review as there were indications that the concerned officer in the first case had not been sufficiently objective (Review Case No. 4(d) of 1993 in the DC's Court in Bandarban).

The case continues.

Conclusion

Mong Thoai Hla Marma and his family have taken refuge in Mongcha Para, 288 Alikadam *Mauza*, Alikadam *Thana*. They have lost all their lands, and he now works as a landless day labourer.

Kabulashwa Chakma

This case demonstrates the linkage between land dispossession and ethnic violence in the CHT.

Location of lands: Naluapara village, 9 Marischyachar
Mauza, Langadu *Thana*

Present Address: 11 Petanyama Chara, Bagachatar Union

Kabulashwa Chakma, son of Rangachan, is about 45 years of age. He was born in Naluapara village within 9 Marischyachar *Mauza*.

Process of Dispossession

Prior to the Kaptai Dam being built, Kabulashwa Chakma had about five to six acres of homestead land with mango, jack fruit, banana and *gamar* trees. These lands were submerged by the Kaptai Dam, and K. Chakma was forced to evacuate his home and move further uphill.

In 1967, he took settlement of three acres of grove land under Holding No. R-97 in the same *mauza*. He planted banana, mango, jack fruit, *gamar* and teak (*Tectona grande Linn.*) on this land, which was registered in his favour, as well as on the surrounding land.

In 1979, Bengali settlers were relocated to several places within Bagachatar Union. This gave rise to ethnic violence and there were conflicts between the settlers and the indigenous people. In addition there were also reports of arson in the village of Nalua Para and the nearby villages of Chiba Bagh, Chalyatali, Pora Adam and Udom Chari. Kabulashwa Chakma fled with his family to nearby 11 Petanyama Chara *Mauza*.

In 1982, after a slight improvement in the situation, K. Chakma returned to his home *mauza*, but his lands and his home had been taken over by the settlers.

Legal Action

Kabulashwa Chakma applied to the local authorities for the return of his lands.

No action was taken.

Conclusion

A few months afterwards the village he lived in, called Mahajanpara, was also burned down by the settlers. K. Chakma and his family had to flee for their lives. They settled again in Petanyama Chara where he lives now. He makes a living through *juming* (shifting cultivation) augmented by what he can earn as a daily labourer on nearby farms.

Pratimoy Khisa

Larey Khisa was the registered owner of grove land and some fringe land. He fled to India, and later returned to Bangladesh under a government-sponsored repatriation programme in 1994. Under the terms of this agreement the rehabilitees were to have their lands returned to them. During his absence his lands had been taken over by settlers.

Name of Father:	Larey Chandra Khisa (deceased)
Specifics of lands owned:	Holding No. 39, Bara Merung <i>Mauza</i>
Location of Lands:	Kalachan Mahajan Para, Bara Merung <i>Mauza</i> , Dighinala Thana Khagrachari Distr.
Present Address:	Bara Merung <i>Mauza</i>

Larey Khisa was the registered owner of 3.27 acres of grove land (Holding No. 39) in Bara Merung Mauza. In addition, he took possession of 2.30 acres of fringe land from Bidya Mukhi and Amulya Mukhi Chakma, daughters of Surya Mohan Chakma. However, before the transaction could be formalised, in 1986, L. Khisa fled to India with his family as a result of the violent situation in the CHT.

During his absence, and while he was in India, L. Khisa agreed to rent the fringe lands to the three sons of Muzaffar Ali, a settler family in the CHT. This was all arranged through intermediaries, and L. Khisa received a nominal sum of money as rent from the three sons, namely Samad, Badshah Mia and Sultan.

Larey Khisa and his family returned to Bangladesh under a government-sponsored programme on 30 July 1994.

On their return to Bangladesh, they discovered that L. Khisa's grove-lands were occupied by Rashid Leader, an officially recognized leader of the settlers, who refused to move from their lands.

The fringe lands were still occupied by Sultan, Badshah and Samad. Larey's son Pratimoy gave them notice of termination of the lease and offered them a fair share of money for the remaining period of the lease. They refused his offer.

Legal Proceedings

On 15 August 1994 Pratimoy Khisa filed a petition with the Thana Nirbahi Officer (TNO) for the return of his lands. He also brought it to the attention of the Additional District Commissioner but to no effect.

An informal arbitration meeting was arranged wherein Muzaffar Ali, the father of Sultan, Badshah and Samad, admitted that his sons had no right to occupy the fringe lands. However, his three sons refused to give up possession. Rashid Leader also refused to return the grove land (fruit farming lands) under his possession.

The three sons of Muzaffar Ali produced a document signed by one of the original owners, Bidya Mukhi, stating that the fringe lands had been transferred to them.

However, Bidya Mukhi appeared before the authorities to testify that she had been forced to sign the document in favour of the three brothers, and clarified that Pritimoy Kisha's family were the true owners as she and her sister had sold it to them many years ago.

On 14 December 1994, the Additional Deputy Commissioner found for the Khisa family and ordered the three brothers to return the fringe lands to Pratimoy Khisa by 20 December 1994 (Memo No. ADC(Revenue)/94 dated 14.12.94).

The three brothers refused on the grounds that Bidya Mukhi had sold the lands to them.

On 24 December 1994, P. Khisa again applied to the Deputy Commissioner for non-compliance of Memo No. ADC (Revenue)/94.

No further action was taken.

In March 1995 P. Kisha made a complaint to the Chakma Chief, who was visiting Merung at the time. The Chakma Chief wrote to the Deputy Commissioner requesting that the case be resolved (Memo No. 22(C) dated 12.03.95).

To date no response has been received.

Conclusion

There is no further information indicating that Pritimoy Khisa and his family have had their lands, grovelands and fringe lands, returned to them as per law and in compliance with the Government's agreement to return all the lands of the returnee refugees under the terms of the 1994 repatriation accord.

- 1 For a view which argues that the denial of autonomy to the CHT people in the name of nation building is actually threatening the nation-state of Bangladesh itself, see Mohsin, Amena and Bhumitra Chakma. "The Myth of Nation Building and Security of Bangladesh", in: Iftekharuzzam and Imtiaz Ahmed eds. *Bangladesh and SAARC: Issues, Perspectives and Outlook*. Academic Publishers, Dhaka, 1992, p. 283-315.
- 2 Stavenhagen, Rodolfo: *The Ethnic Question: Conflicts, Development, and Human Rights*. United Nations University Press, Tokyo, 1990, p. 101.
- 3 Also referred to in its abbreviated form of CHT in this paper. The term Hill Tracts, also used as "Chittagong" Hill Tracts is a misnomer originating from its proximity to the town of Chittagong (see later).
- 4 Throughout this paper, the terms "indigenous people", "indigenous hill people" and "Jummas", will be used interchangeably for analytical and descriptive purposes.
- 5 According to the Governmental census of 1991 (Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning, 1994) the indigenous peoples number 501,144 in total. The indigenous peoples however do not agree with this figure and estimate their number to be approximately 600,000. In addition, it is not clarified whether the CHT refugees in India (about 55,000) are included in the 1991 census.
- 6 See IWGIA 1984: Document No. 51; IWGIA 1992: Report No. 4; Anti-Slavery Report No. 2-1984. Also see ILO Report III (Part 4A) of the Committee of Experts on the Application of Conventions and Recommendations: 1993, 1994 and 1996.
- 7 There were six rounds of talks between 1985-88 which did not produce any concrete outcome. For a detailed analysis of the negotiations see CHT Commission. *'Life is not Ours': Land and Human Rights in the CHT, Bangladesh*. Update No. 2, April 1994, p. 4.
- 8 Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1994/82 (UN Document No. E/CN.4/1995/61 of 14 December 1994, p. 22).
- 9 The name Chittagong Hill Tracts originated after the British annexed the region in 1860. Previously it was known as *Jum Bungoo* or *Kapas Mahal* in Mughal and British revenue records. Due to the lack of detailed knowledge about the region, in addition to the fact that its revenue administration came to be controlled by the Chief of the Chittagong Council, and later by the Collector of Chittagong, it came to be regarded as part of the revenue administration of the Chittagong Collectorate - hence its present name.
- 10 *Chittagong Hill Tracts District Statistics 1983*, Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning, Government of the People's Republic of Bangladesh, p. (ix).
- 11 CHT District Statistics 1983: ix. Note: In this paper, the Chittagong Hill Tracts will be referred to in its entirety unless indicated to the contrary.
- 12 CHT District Statistics 1983: ix.
- 13 Hutchinson, R.H. Sneyd, Superintendent, Chittagong Hill Tracts: *An Account of the Chittagong Hill Tracts*. The Bengal Secretariat Book Depot, Calcutta, 1906, p. 2-3.
- 14 The indigenous peoples are collectively referred to as *Jumma* derived from their slash and burn cultivation on the hillsides (known locally as *jum*). This term, which historically carried derogatory connotations, has been taken up by the indigenous peoples to identify themselves in a collective manner. The term *Jumma* is now a source of indigenous identity. In this report the terms *jumma*,

jhumiya and *jumia* will be used interchangeably.

- ¹⁵ All references to the indigenous peoples of the Chittagong Hill Tracts will include all the different peoples unless indicated to the contrary.
- ¹⁶ The 1991 Bangladesh Population Census estimates the total population of the CHT to be 974,445 of which 501,144 or 51% are "tribal". However, there is information suggesting that the refugees in India may not have been included in the 1991 census. Furthermore there is widespread belief among the indigenous people themselves that their number is far greater than the official estimates. For further details see Minority Rights Group Report 92/1: *The Adivasis of Bangladesh*, p. 11 and Roy, Raja D. "Land Rights, Land Use, and Indigenous Peoples in the Hill Tracts", in Philip Gain ed. *Bangladesh: Land, Forest and Forest People*, Dhaka, October 1995, p. 50.
- ¹⁷ Roy, Raja Devasish. "Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts", in Huda, Shamsul ed. *Land: A Journal of the Practitioners, Development and Research Activists*, Feb. 1994, Vol. 1, No. 1, p. 50.
- ¹⁸ Bangladesh is signatory to the UN Convention on the Rights of the Child, 1989 which states: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language." (Article 30). In addition, article 23 (1) of ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) states that "Children belonging to the populations concerned shall be taught to read and write in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong." Bangladesh is also a signatory to, and therefore bound by the provisions of this treaty.
- ¹⁹ Rule 4. Also see Rules 6, 34, 45 and 50 of Regulation 1 of 1900.
- ²⁰ See Act No. 12 of 1995; Paripatra of the Board of Revenue of 12 July 1995, and administrative regulations dated 17 September 1992, 10 March 1982, 4 September 1980 and 6 April 1967.
- ²¹ Government of the People's Republic of Bangladesh, National Board of Revenue. *Application of the Income Tax Act, 1922 - Indigenous Hillmen residing in the Chittagong Hill Tracts - clarification regarding*. Memo C. No. 4 (6) Kac-5/77/589 dated 4.9.1980. See also correspondence of the Board of Revenue (17 October 1992 and 10 March 1988 among others) which refer to "indigenous hillmen".
- ²² Act No. 12 of 1995.
- ²³ Report by Jose R. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: *Study of the Problem of Discrimination Against Indigenous Populations*, UN Document No. E/CN.4/Sub.2/1986/7/Add.1, Vol. II, p. 15.
- ²⁴ Hutchinson, R.H. Sneyd, Superintendent of the CHT 1906. *An Account of the Chittagong Hill Tracts*, Calcutta, Bengal Secretariat Book Depot, p. 50.
- ²⁵ Roy, Raja D. 1995, op. cit., p. 12.
- ²⁶ Roy, Raja D. 1995, op. cit., p. 56.
- ²⁷ Rule 52 of the 1900 Regulations prohibits the entry and residence of persons who are not indigenous to the CHT, Lushai Hill, Arakan Hill Tracts or Tripura State. See later for details.
- ²⁸ *CHT Gazetteer* 1975: 42, 43.
- ²⁹ For details of the problems related to fruit gardening and forestry see Roy, Raja

- D. 1995, op. cit., p. 84-96.
- ³⁰ Amendment of Rule 38 of the CHT Regulation by the Provincial Government's notification No. 9088 E.A. dated 16 April 1937 as published in the *Calcutta Gazette* (Part I) dated 12 April 1937. See also Rules 35, 37, 39, 40 and 40A of the Regulation for details of the chiefs' role in the CHT administration.
- ³¹ Anonymous: *Constitutional Crisis in the Chittagong Hill Tracts: A Brief Review (1860-1989)*, p. 2. 1990.
- ³² As amended by the Devolution Act, XXXVIII of 1920.
- ³³ Source: Bangladesh Bureau of Statistics. *Statistical Pocketbook of Bangladesh 1994*. Statistics Division, Ministry of Planning, Government of the People's Republic of Bangladesh.
- ³⁴ See *Constitutional Crisis* 1990: 20
- ³⁵ *CHT Gazetteer* 1971:279.
- ³⁶ The Hill Tracts were never a part of Chittagong. This misnomer can be attributed to the fact that the tributes which the hill chiefs paid for the privilege of trading (initially in cotton and later in money) were collected by an official based in Chittagong, the "Collector".
- ³⁷ See Roy, Raja Bhuvan Mohan. *History of the Chakma Raj Family*. 1919. Reproduced in *CHT Gazetteer* 1971: 33-36. Chittagong.
- ³⁸ Hutchinson, R.H. Sneyd, 1906, op. cit., p. 5
- ³⁹ See Lewin, Lt. Col. T. H. , 1995 , op. cit., p. 51
- ⁴⁰ Schendel, Willem van ed. *Francis Buchanan in Southeast Bengal (1798): His Journey to Chittagong, the Chittagong Hill Tracts, Noakhali and Comilla*. University Press Ltd., Dhaka, 1992.
- ⁴¹ Bangladesh Groep Nederland. "The Road to Repression: Aspects of Bengali Encroachment on the Chittagong Hill Tracts 1860-1983", in Wolfgang Mey ed. *Genocide in the Chittagong Hill Tracts, Bangladesh*. IWGIA Document 51. IWGIA, Copenhagen, 1983.
- ⁴² See *CHT Gazetteer* 1971: 33-36.
- ⁴³ Lewin 1912:206.
- ⁴⁴ Hutchinson 1906:2.
- ⁴⁵ Khan was originally a Buddhist Mongol title, e.g. Chengiz Khan. It was also used by the Buddhist kings of neighbouring Arakan (Rakhine) in Myanmar.
- ⁴⁶ See Raja D. Roy 1995: 53.
- ⁴⁷ *CHT Gazetteer* 1971:37-38.
- ⁴⁸ *CHT Gazetteer* 1971: 28.
- ⁴⁹ Originally there were a number of different peoples living in the Hill Tracts, among whom the Lushai (Kuki) groups are notable. Hutchinson records that "Before the British occupation the country was divided into two, those living to the north of the river Karnaphuli owing their allegiance to the titular heads of the Chakma tribe, while those residing to the south of the river recognized the Bohmong, or head of the Rigraysa Maghs, as their Chief. Since our occupancy of the country, a third Chief, who is also a Magh, belonging to the Palaingsa clan, has been appointed, and administers the northern portion of the district. He is known by the title of the Mong Raja." [Hutchinson 1906:24].
- ⁵⁰ Anti-Slavery Society. *The Chittagong Hill Tracts: Militarization, Oppression and the Hill Tribes*. Indigenous Peoples and Development Series, Report No. 2. London, 1984, p. 14.
- ⁵¹ Lewin 1912: 205.
- ⁵² Lewin 1912: 211.

- ⁵³ Lewin 1912: 249.
- ⁵⁴ Lewin 1912: 250. N.B. This is the first recorded indication of the provisions of the Regulation being inadequately applied.
- ⁵⁵ *Anti-Slavery Report* No. 2 - 1984: p. 45.
- ⁵⁶ Hutchinson notes: "The trade of the Hill Tracts is principally in the hands of Chittagonian Bengalis, who convey their goods from place to place by means of boats and rafts." (Hutchinson 1906: 44).
- ⁵⁷ Hutchinson (1906) confirms: "The policy of the Government is to interfere as little as possible with tribal customs." (p. 32).
- ⁵⁸ Burger, Julian. *Report from the Frontier: The State of the World's Indigenous People*. London: Zed Books Ltd., and Cambridge, Massachusetts: Cultural Survival Inc. 1989, p. 130.
- ⁵⁹ See Rules 1-7, 34 (unamended), 41, 45 and 50 of the Regulations for further details. Also Hutchinson at p. 42 where he notes that "[t]he authorities do all in their power to protect the hillmen from the rapacity of the money-lenders, but it is a very difficult task to deal with these blood-suckers, and the general improvidence of the hill-man renders him an easy prey to these astute rogues."
- ⁶⁰ The leaders of the indigenous peoples had demanded "hill tracts for hillmen". Representatives of the two hill peoples organisations (the Hill Peoples Association was the first NGO to be formed in the CHT) were either arrested by the Pakistani authorities or went across the border to India. Also see *Anti-Slavery Report* No. 2 - 1984 at p. 45.
- ⁶¹ Based on interviews with Raja Tridiv Roy, Chakma Raja.
- ² *Anti-Slavery Report* No. 2-1984:22.
- ⁶³ Declarations made in the Celebration of the International Year of the World's Indigenous Peoples, 1993 by the Celebration Committee for the 1993 International Year of the World's Indigenous People, Bangladesh, Dhaka, 18 December 1993.
- ⁶⁴ Bennett, Gordon. *Aboriginal Rights in International Law*. Royal Anthropological Institute of Great Britain and Ireland, Occasional Paper No. 37, Published in association with Survival International, 1978, p. 29.
- ⁶⁵ Bennett, Gordon 1978: 86-87.
- ⁶⁶ The Mer Islands are the most easterly of the Torres Strait Islands of which Mer (Murray) Island is the largest.
- ⁶⁷ *Mabo v. Queensland (No. 2)* (1992) 175 Commonwealth Law Reports 1 (Mabo (No. 2)).
- ⁶⁸ For a more detailed analysis of this concept, see Roy, Raja Devasish: "Hill people: The Myth of Nomadism". *Dhaka Courier* 25 February 1994.
- ⁶⁹ Statement by the Bangladesh Government to the United Nations Working Group on Indigenous Populations 1991.
- ⁷⁰ See Hutchinson 1906: 51-54.
- ⁷¹ Sopher, David E.: The Swidden/Wet Rice Transition Zone in the Chittagong Hill Tracts. *Annals of the Association of American Geographers*, 54, 1964, p. 114.
- ⁷² *Skattefällsmålet* of 29 January 1981.
- ⁷³ JB:15, Promulgation of the new JB, cf Uden, O. *Svensk Sakratt, Fast Egendom*. Gleerups Forlag, Lund 1969, 137. Published in E. Gayim and K. Myntti eds. *Indigenous and Tribal Peoples Rights - 1993 and After*. Northern Institute for Environmental and Minority Law at the University of Lapland, Juridica Lapponica No. 11, 1995, pp. 119.
- ⁷⁴ CHT Commission. 'Life is not Ours', *Land and Human Rights in the Chittagong*

Hill Tracts, Bangladesh. Report distributed by the International Work Group for Indigenous Affairs (IWGIA) and the Organising Committee Chittagong Hill Tracts Campaign. Copenhagen, May 1991, p. 60.

⁷⁵ *Ahun* by the Toungchangyas and *Roajas* by the Marma (CHT Gazetteer 1971: 241).

⁷⁶ *Statistical Pocketbook of Bangladesh 1994*, Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning at p. 69.

⁷⁷ Hunter, W.W. *A Statistical Account of Bengal*, Vol. 6, 1876, p. 91, as quoted in Löffler, Lorenz G. : Land Rights as Instruments of Social Transformation: The Case of the Chittagong Hill Tracts (Bangladesh)", in S. Büchi et.al. (eds.) *Indigenous Peoples, Environment and Development*. IWGIA Document No. 85, Copenhagen, 1997.

⁷⁸ Hutchinson 1909:33.

⁷⁹ Roy, Raja D. 1994, op. cit., p. 13.

⁸⁰ Letters No. 543P-D dated 7 October 1893, and No. 1844P dated 16 September 1899 from the Chief Secretary to the Government of Bengal to the Commissioner of the Chittagong Division (Chakma Raja's Archives, Rangamati).

⁸¹ See Schendel, Willem van ed. 1992, op. cit.

⁸² The dichotomy prevalent in the British approach to the land rights of the indigenous peoples is indicated by the following quotation from the same report of Superintendent Hutchinson which confirms that territoriality was an inherent part of the indigenous system: "In the earliest times the Chiefs collected from certain families, irrespective of the part of the country where they might reside originally, their rights only extended to men of their own clan, but as their position became assured and their power consolidated, they collected from other and weaker tribes and villages, till finally the extent of individual authority became represented by definable natural boundaries." (Hutchinson 1909: 33).

⁸³ This is known as *parkalya* whereby an indigenous family has to pay taxes to two authorities.

⁸⁴ Löffler, Lorenz G. 1997, op. cit., p. 121.

⁸⁵ Roy, Raja D. 1995: 56.

⁸⁶ Some villages did not have a *Karbari*, and at one period during the British administration it was decided not to have a *Karbari* unless there were 40 houses in a given village.

⁸⁷ Roy, Raja D. 1995: 54.

⁸⁸ Webb, W.E., ADB Consultant, Forestal International Ltd., Vancouver, Canada, and R. Roberts, Forestry Advisor, CIDA, Ottawa, Canada: *Reconnaissance Mission to the Chittagong Hill Tracts, Bangladesh: Report on Forestry Sector*. 1976, p. 3.

⁸⁹ The name of the old capital of the Chakmas in the present day Chittagong District is known as Rangunia, a Bengali derivative of *Ranya*.

⁹⁰ Generally the *jum* tax was Rs. 6.00 per *jumiya* and apportioned using the following formula: Raja - Rs. 2.50; Headman/woman: Rs. 2.25 (Rs. 1.25 actual share

and Rs. 1.00 as commuted value of *begar* or services; and Rs. 1.25 to the government.

⁹¹ As inserted by notification No. 7848 E.A. dt. 15 July 1939 published at page 1723, Part I of the Calcutta Gazette dated 20 July 1939.

⁹² The GOC (General Staff Officer One, Counter-Insurgency) is the highest ranking army official in Hill Tracts matters, stationed in Chittagong. The very fact that the GOC *advises* the Hill Tracts DCs, who are the highest ranking executives in the CHT area is indicative of the authority and power exercised by the armed forces in civilian matters in the Hill Tracts, and their dominant role in policy formulation.

⁹³ See Sattar, M.A., Conservator of Forests. "Jumias Settlement Schemes of Local Forest Department: With Major Focus of Proper Village Land Use Planning and Implementation". Paper presented at the National Workshop on Development Experiences and Prospects in the Chittagong Hill Tracts, arranged jointly by ICI-MOD/Special Affairs Division/CHT Development Board/BIDS at Rangamati on 23-25 January 1995, p. 8.

⁹⁴ Pratap, Tej and Harold R. Watson. ICIMOD Occasional Paper No. 23. Kathmandu, Nepal: International Centre for Integrated Mountain Development, 1994, p. 11.

⁹⁵ Hutchinson 1906, *op. cit.*, p. 51.

⁹⁶ Ascoli, F.D. *Report on the Administration of the Chittagong Hill Tracts*. Rangamati, 1918. Chakma Raja's Archives, p. 14.

⁹⁷ Common lands.

⁹⁸ Also see under following section on Policies and Programmes of Dispossession.

⁹⁹ See Webb & Roberts 1976: 2.

¹⁰⁰ All India Reports (AIR) 1923 Cal 377 (DB).

¹⁰¹ (1905) 29 Bomb. 48.

¹⁰² AIR 1963 Sc. 1019=2 SCA 163 = (1963) Sup. 1 SCR 912.

¹⁰³ See Webb and Roberts 1976: *Report on Forestry Sector*.

¹⁰⁴ In 1992, the Government published an official notification of its decision to create a protected forest in several mauzas of Rangamati District (Bangladesh Gazette Notification of 21 May 1992). The order met with protests from the indigenous peoples and there were reports of demonstrations and protest meetings in Rangamati (14 July 1992 in *Dainik Purbakone*, Chittagong and on 16 July 1992 in *Saptahik Bonobhumi*, a weekly journal).

¹⁰⁵ Farooque, Mohiuddin. "Traditional Land Rights: Conflict of Traditions", in *Bangladesh: Land, Forest and Forest People*. Dhaka: SEHD, October 1995, p. 107.

¹⁰⁶ From a letter of S.B. Oldham Commissioner 1885: *Mr. Pantet's Settlement of the Damai-ni-Koh, 1837 to 1854: Localising nomad Joomias, forming Taluq areas and Mouzas without a map or survey. The Damai-ni-Koh Rules*. Chakma Raja's Archives, Rajbari, Rangamati, p. 3.

¹⁰⁷ *Ibid* at p. 7.

¹⁰⁸ Hutchinson 1906:37-38.

¹⁰⁹ Rule 43 of the original Rules of 1 May 1900.

¹¹⁰ Land could be settled to "hillmen" or "non-resident hillmen" (Rule 34 (a) (i)).

¹¹¹ The use of the word "outsiders" is significant as an acknowledgement of the recognition of bringing plainspeople into an area historically recognized as

- belonging to the indigenous hill people.
- ¹¹² Roy, Raja D. 1995, op. cit., p. 62.
- ¹¹³ At present there is no information indicating that modalities for co-ordination and information-sharing have been established or are contemplated between the Development Board and the farmers. Yet this would be a simple mechanism to put into place, and would result in increased productivity and economic self-sufficiency for the farmers in the Hill Tracts.
- ¹¹⁴ For a detailed analysis on fruit farming and forestry in the CHT see Raja D. Roy 1995: 84 to 96.
- ¹¹⁵ Acts 19, 20 and 21 of 1989. Substitute Khagrachari or Bandarban for the two other districts.
- ¹¹⁶ To give an indication of the authority actually exercised by the Local Government Councils vis-à-vis land matters in particular see *The Mogban Rehabilitation Scheme* in the following section. This case study indicates not only the involvement of the armed forces in land-related matters but also the extent of their decision making power.
- ¹¹⁷ L.G. Löffler. "Report on a Short Visit to Banderban and Rangamati (Chittagong Hill Tracts, Bangladesh)", in *Ecology and Human Rights: Two papers on the Chittagong Hill Tracts, Bangladesh*. 1991, Zürich, p. 2.
- ¹¹⁸ Webb and Roberts: *Reconnaissance Mission to the Chittagong Hill Tracts, Bangladesh: Report on Forestry Sector*, Vol. 2. Asian Development Bank, May 1976, p. 15.
- ¹¹⁹ *CHT District Gazetteer* 1971:107.
- ¹²⁰ Webb & Roberts 1976: 15.
- ¹²¹ "The Jhum Control Division is supposed to raise trees in those areas which have been heavily *jhumed* in the past. These areas when brought under economic trees, like fruit trees, are then to be handed over to the tribal people." *CHT Gazetteer* 1971, p. 99.
- ¹²² Roy, Raja Devasish. *Deforestation, Biodiversity Loss and Erosion of Land Rights of the Indigenous Peoples in South Asia* (unpublished). Paper presented at the Indigenous Peoples Preparatory Committee (IPPC) for the UN Commission on Sustainable Development, New York, 17-21 April 1995.
- ¹²³ *Bangladesh District Gazetteers: Chittagong Hill Tracts* 1975, Establishment Division, Ministry of Cabinet Affairs, Dhaka, p. 109.
- ¹²⁴ Based on Webb & Roberts 1976: 13.
- ¹²⁵ See Farooque, Mohiuddin. "Traditional Land Rights: Conflict of Traditions", in SEHD. *Land, Forest and Forest People*, 1995, p. 105.
- ¹²⁶ As noted by Hutchinson: "No cultivation is allowed within the area of forest reserve. The revenue derived from the licenses to remove forest produce and the tolls is very considerable, and amounted in 1903-04 to Rs. 86,902." See Hutchinson 1906:31.
- ¹²⁷ On 21 May a notification was published in the Official Government Gazette stating that the Ministry of Environment and Forests had classified nearly 150,000 acres of land in the three Hill Districts as a Reserve Forest (Bangladesh Gazette of 21 May 1992). This met with strong protests from the indigenous people including their leaders. The Chakma Raja, Devasish Roy expressed his concern at the impact of this measure on the indigenous people. In a letter to the Ministry of Forests and Environment on 4 August 1992 he stated: "We are concerned to learn that the Government is to undertake a project to create protected forests in several mauzas ... we feel that such a programme would be effective if implemented with the active co-operation of the residents of the area concerned. It is apprehended

that if the proposed project is implemented according to the proposed plan it will adversely effect and cause hardship to a large number of people... many of [whom] were earlier displaced by the Kaptai Hydroelectric project in 1960." The Member of Parliament for Rangamati, Mr. Dipankar Talukdar also wrote to the Minister in August 1992 regarding this proposal, in particular the fact that the creation of the proposed reserve forest would result in the displacement of "thousands and thousands of families."

¹²⁸ *CHT Gazetteers* 1975: 107. See also Sattar, M.A. (Conservator of Forests) 1995: 8.

¹²⁹ This is also contrary to the provisions of article 8 (h) of the UN Convention on Biological Diversity, 1992 which states: "Each contracting party shall, as far as possible and as appropriate: (h) prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;" Bangladesh is a signatory to this Convention.

¹³⁰ See Roy, Raja Devasish. *Deforestation, Biodiversity, Loss and Erosion of Land Rights of the Indigenous Peoples in the Chittagong Hill Tracts*. Paper presented at the Indigenous Peoples Roundtable meeting in preparation for the Commission on Sustainable Development, United Nations, New York 1995. See also *CHT Gazetteer* 1975: 106.

¹³¹ See *CHT District Gazetteer* 1971:106.

¹³² From Webb and Roberts 1976:7-9.

¹³³ See Roy op.cit.

¹³⁴ Hutchinson 1906:38.

¹³⁵ *Report of the CHT Commission* 1991:82.

¹³⁶ *Haji Hafizudding Sikde vs. Prov, E. Pak.* 12 PLR 724; 1961 All W.R. Hc 532.

¹³⁷ Commenting on the versatility of the bamboo in meeting the needs of the indigenous people, Hutchinson notes: "The bamboo, of which there are some ten varieties in the Hill Tracts, is the most important of the forest produce of the district, and is invaluable to the hillman. It is no exaggeration to say his very existence is dependent on it... Finally the bamboo is a source of considerable revenue to the Government, as a tax is levied on its removal from the Hill Tracts, and hundreds of thousands are floated down the rivers every year, bound together in rafts frequently five-hundred feet in length.... The rafts are also used as a means of transporting big stacks of thatching grass, baskets of cotton, grain, canes, and other varieties of hill produce. The custodians live on the rafts, which take a week or ten days to float down to Chittagong, where they are broken up and sold." [Hutchinson 1906:62-63].

¹³⁸ See Webb & Roberts: *Report on Forestry Sector* 1976:19.

¹³⁹ The issue was raised in the Australian Parliament by the Foreign Minister, Senator Gareth Evans, who expressed concern that after declaring "approximately 150,000 acres of land in the Chittagong Hill Tracts as Reserved Forest, the Government of Bangladesh may now seek to remove some 20,000 tribal families from this year. Admittedly this is not a straightforward or simple issue but relocating these people at this time would clearly only exacerbate what is already a volatile situation." In: Chakma, Kabita and Glen Hill 1995, op. cit., p. 130.

¹⁴⁰ In a press conference (13 January 1996) called by the Chakma Chief in Rangamati in order to highlight the magnitude of this problem, indigenous farmers including Headmen, reported that the Forest Department officials, in collusion with the local police, had arrested, detained and charged hundreds of indigenous villagers with stealing forest produce. Many of these cases were reported to be false, as many of the persons charged had left the area, or had died well

- before the date of the alleged crime (published in *Bhorer Kagaj*, a national newspaper on 18 January 1996).
- ¹⁴¹ CHT Gazetteer 1971: 99.
- ¹⁴² A local method of counting. One lakh is 100,000.
- ¹⁴³ CHT District Gazetteer 1971: 42.
- ¹⁴⁴ The Chakma Chief, Raja Tridiv Roy met with the Minister in Charge to explain the tremendous damages the project would have on the lives and lands of the indigenous people. He was told that if an arm had to be amputated (to help the entire body) then that arm had to go. Mr. Manobendra Narayan Larma, later to become a member of Parliament (MP) and lead the Jana Samhati Samiti (JSS), was arrested by the police for demonstrating against the decision to construct the dam.
- ¹⁴⁵ CHT Gazetteer 1971: 155.
- ¹⁴⁶ "Arunachal Chakmas face persecution" in *The Telegraph*, 26 October 1995; "Chakmas for rights observer" in *The Hindustan Times*, 9 November 1995; and "No refuge: Tribe fears persecution in anti-outsider backlash" in *Far Eastern Economic Review*, November 17, 1994, p. 20.
- ¹⁴⁷ Rodolfo Stavenhagen 1990: *The Ethnic Question - Conflicts, Development, and Human Rights*, p. 105.
- ¹⁴⁸ Independent Commission on International Humanitarian Issues: *Indigenous Peoples*, p. 58.
- ¹⁴⁹ See Sopher, David E. "Population Dislocation in the Chittagong Hill Tracts", *The Geographical Review*, Vol. LIII, New York, 1963, p. 348-349. Sopher provides an excellent analysis of the displacement caused by the dam.
- ¹⁵⁰ From CHT Gazetteer 1971:42.
- ¹⁵¹ Chakma, Siddarth. "Pransanga: Parbattya Chattagram", in *Issues: The Chittagong Hill Tracts*. Nath Brothers, Calcutta, 1986, p. 25.
- ¹⁵² CHT Gazetteer 1971: 43.
- ¹⁵³ As per the provisions of ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989, "Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities." (Article 7 (3)). Prior impact assessment studies are gaining acceptance as necessary in determining the consequences of the proposed project and there is a trend towards establishing such studies as a prerequisite in the project formulation phase.
- ¹⁵⁴ Siddarth Chakma 1986: 29.
- ¹⁵⁵ Internally displaced persons are those who fulfil the criteria to qualify as refugees except in one respect; they remain within the borders of their country. "There is as present no clear formulation of the legal principles applicable to internally displaced persons and no instrument focused on their particular needs." Report of the Representative of the UN Secretary-General on Internally Displaced Persons to the Commission on Human Rights, "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission: Human Rights, Mass Exoduses and Displaced Persons," (UN Document No. E/CN.4/1995/50, p. 30). However, the working definition as provided in the *Analytical Report of the Secretary-General on internally displaced persons* is the following: "persons who have been forced to flee their homes suddenly and unexpectedly in large

- numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country." (UN Document No. E/CN.4/1992/23).
- ¹⁵⁶ Forestal Report 1964-66: *Soil and Land Use Survey - CHT*. 7 text volumes and 2 maps volumes.
- ¹⁵⁷ Data based on Forestal Report 1966 from Anti-Slavery Report No. 2 - 1984: 17, and Chakma Salil Roy 1979: *Parbatya Chattagramer Arthanaitik Samashya O Tar Samadhan* (in Bengali), in Sushamoy Chakma (ed.), *Bijhu*, Dhaka 1979, pp. 7-24.
- ¹⁵⁸ Bodley 1975:6f.
- ¹⁵⁹ Löffler, Lorenz G. Land rights as Instruments of Social Transformation: The case of the Chittagong Hill Tracts (Bangladesh), op.cit., p. 124.
- ¹⁶⁰ Ascoli, F.D. *Report on the Administration of the Chittagong Hill Tracts*, 1918. Chakma Raja's Archives, Rangamati, p. 14.
- ¹⁶¹ This became the Bangladesh Agriculture Development Programme (BADC) after 1971.
- ¹⁶² For details of the Standard Horticultural Holdings Programme see Mey, W.: *Opposed and Linked: The Fallacy of Symbiosis*, in ibid. *Genocide in the Chittagong Hill Tracts*, IWGIA Doc. No. 51, Copenhagen, 1984.
- ¹⁶³ See Roy, Raja D. 1995: 58.
- ¹⁶⁴ Mey, W. 1984:106.
- ¹⁶⁵ *Amendment to Rule 34 of CHT Regulation 1 of 1900* (Notification No. 1L-15/69/216-R.L. Dated Dhaka the 16th of September, 1971).
- ¹⁶⁶ Roy, Raja D. 1995:59.
- ¹⁶⁷ Roy, Raja D. 1995:59.
- ¹⁶⁸ IWGIA Document 51, 1984: 24.
- ¹⁶⁹ There is no explanation or other information provided in the amending legislation specifying the definitional criteria of a "deserving person".
- ¹⁷⁰ Campos, J.J. A. *History of the Portugal in Bengal*. 1919, pp. 66-81.
- ¹⁷¹ De Barros' Map of Bengal (1550 circa), in *Asia*, Dec. IV, Pt. II, p. 451.
- ¹⁷² "It was resolved by the Government in 1873, that the headmen were to be nominated by the Chiefs and appointed by the Deputy Commissioner and that they must be chosen from among the Jhumiyas and must not be non-tribesmen." (*CHT District Gazetteer* 1971, p. 254.)
- ¹⁷³ *CHT District Gazetteer* 1971, p. 252: "This has enabled people from other districts to carry on trade in the Hill Tracts and their number is increasing with the fast development of the area."
- ¹⁷⁴ Explanation: "...non-hillmen resident means a person who has a house in the district of Chittagong Hill Tracts for at least 15 years and no house outside that district, or has a house in the district of Chittagong Hill Tracts with agricultural land settled by the Deputy Commissioner of that district without any house or agricultural land outside that district."
- ¹⁷⁵ For an concise analysis of the settlement programme and its impact on the land rights of the indigenous peoples see Raja Devasish Roy: *The Problem of Dispossession of Lands of Indigenous Peoples of the Chittagong Hill Tracts by Government-Sponsored Migration* presented at *Open Dialogue and Seminar on The Chittagong Hill Tracts Problem and its Solution*, The National Committee for the Protection of Fundamental Rights in the CHT, German Cultural Centre, Dhaka Bangladesh, 2 June 1995.
- ¹⁷⁶ One US dollar is the equivalent of approximately Taka 40 today.
- ¹⁷⁷ Source: Anti-Slavery Report 1984: *The Chittagong Hill Tracts* at p. 23.

- ¹⁷⁸ The terminology “bumpy lands” describes the gently sloping lands in the Hill Tracts (post-dam).
- ¹⁷⁹ Anti-Slavery Report 1984: annex 1.
- ¹⁸⁰ Forestal Forestry and Engineering International Ltd. *Report: Chittagong Hill Tracts, Soil and Land Use Survey*, 1967. Referred to hereinafter as the Forestal Report.
- ¹⁸¹ Source: Anti- Slavery Society Report No. 2 - 1984: 26.
- ¹⁸² Compiled from information in various sources including Hunter 1876:37-38; Hutchinson 1909:14-16; Bessaignet 1958:4; *CHT Gazetteer* 1971:33; *CHT District Statistics* 1983: 27; *Statistical Pocket Book Bangladesh* 94.
- ¹⁸³ This included Europeans, Assamese and Nepalese origin government employees in addition to the Bengali population of about 524. See for further details Dewan, Aditya 1991:48.
- ¹⁸⁴ As indicated earlier, the census figures in general and the census of 1991 figures in particular are open to question. It is generally opined by informed sources that the official numbers are inaccurate. In addition, it not clear whether the total population of the CHT includes the refugees in India. See Roy, Raja D. 1995 for details.
- ¹⁸⁵ Based on the author’s informal discussions with indigenous CHT people in Dhaka.
- ¹⁸⁶ Informal estimate only.
- ¹⁸⁷ The format and calculations are based on information in Roy, Raja D. 1995, op. cit.
- ¹⁸⁸ See Roy, Raja D. 1995, op. cit.
- ¹⁸⁹ See Amnesty International, Survival, Anti-Slavery, Organising Committee CHT Campaign, IWGIA and reports of the ILO. For instance in 1991 the ILO Committee of Experts noted the following: “In its comments in recent years, the Committee has noted the existence of a continuing conflict in the Chittagong Hill Tracts region of the country, where some 600,000 tribal people live. It recalls that there had been an influx of non-tribal people into that region, conflicts had resulted, and a number of tribal refugees had fled the region into India. Representatives of the Director-General visited the country and held extensive discussions with the Government, and Government representatives have discussed the situation with the Conference Committee on several occasions.” Report III (Part 4 A), International Labour Conference, 78th session, 1991, p. 349.
- ¹⁹⁰ Two batches of refugees were repatriated to the CHT in 1994. However, due to the non-implementation of a 16 point package offer made to the refugees including the return of their lands, the repatriation process has been discontinued. See *Report on the Visit of the Jumma Refugee Team to Chittagong Hill Tracts (CHT) Bangladesh on March 14-15, 1995* published and circulated by CHT Jumma Refugees Welfare Association, Takumabari Relief Camp, Tripura, India on 4 April, 1995 for further details. Also see *The Indigenous World 1994-95*, International Work Group for Indigenous Affairs, Copenhagen 1995, p. 167.
- ¹⁹¹ Roy, Raja D. 1995, op. cit., p. 67.
- ¹⁹² Roy, Raja D. 1995, op. cit., p. 68.
- ¹⁹³ The problem of impunity was raised by the UN Special Rapporteur on Extra-Judicial, Summary and Arbitrary Execution in his report (UN document E/CN.4/1995/61 at p. 22). The issue has also been highlighted by indigenous delegates to the Working Group on Indigenous Populations (July 1995) and by international non-governmental organisations. See for example Amnesty Inter-

- national report on *Bangladesh: Reprisal Killings in Logong, Chittagong Hill Tracts, in April 1992* (Report No. ASA 13/04/92).
- ¹⁹⁴ Roy, Raja D. 1995:70.
- ¹⁹⁵ There is said to be a considerable financial expense involved in requesting the officials to expedite the process.
- ¹⁹⁶ From the author's interviews with indigenous land owners in Rangamati and Dhaka.
- ¹⁹⁷ See Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), International Labour Conference 80th Session 1993, p. 309 for further details.
- ¹⁹⁸ UN Document No. E/CN.4/Sub.2/1994/18.
- ¹⁹⁹ Burger Julian. *Report from the Frontier: The State of the World's Indigenous Peoples*. Zed Books Ltd., London and Cultural Survival Inc. Cambridge, Massachusetts, 1987, p. 133.
- ²⁰⁰ Report of the CHT Commission 1991: '*Life is not Ours*' - *Land and Human Rights in the Chittagong Hill Tracts, Bangladesh*, p. 56 (summarised in UN Document No. E/CN.4/Sub.2/AC.4/1991/5).
- ²⁰¹ See for instance ILO Report III (Part 4A) 1991, 1993 and 1994; Reports of the Committee on the Elimination of Racial Discrimination (Nos. CERD/C/SR.942, 943 and 951) and also its report to the General Assembly (A/47/18) where it stated "There were said to be an estimated 35,000 or more security troops operating in the Chittagong Hill Tracts, and widespread torture and other human rights violations, including summary executions, the murder of children and rape of women, curfews and other restrictions on freedom of movement, had been reported." (p. 35).
- ²⁰² Resolution B3-1169 and 1252/92: *Resolution on human rights in Bangladesh* published in the Official Journal of the European Communities No. C 284/105 on 2.11.92.
- ²⁰³ Details in UN Document No. E/CN.4/1995/61.
- ²⁰⁴ See for example Amnesty International Report No. ASA 13/04/92, Anti-Slavery International Report No. 2-1984: *The Chittagong Hill Tracts - Militarization, oppression and the hill tribes*; International Work Group on Indigenous Affairs Document No. 51: *Genocide in the Chittagong Hill Tracts, Bangladesh* and *The Indigenous World 1994-95*, and the Report of the CHT Commission 1991: *Life is not Ours - Land and Human Rights in the CHT, Bangladesh*, among others.
- ²⁰⁵ See Report of the CHT Commission 1991: 39-57.
- ²⁰⁶ Although there are reports that some cluster villages have been dismantled, many continue.
- ²⁰⁷ For a detailed account of the cluster village and resettlement policy see CHT Commission Report 1991:71-74.
- ²⁰⁸ CHT Commission Report 1991: 72.
- ²⁰⁹ See Amnesty International 1992: *Bangladesh: Reprisal killings in Logong, Chittagong Hill Tracts, in April 1992*, May 1992, Report No. ASA 13/04/92: "Logong in Panchari Upazilla, Khagrachari district, is a so-called "cluster village" in which [indigenous] people from several far-flung hamlets were resettled in 1989-1990 as part of the government's counter-insurgency policy. In "cluster villages" the [indigenous] population can be subject to closer surveillance, and the *Shanti Bahini* are cut off from a supply line within the local community. Logong consisted of about 600 houses with as many families. A camp of Bangladesh Rifles is located just 250 yards from the village; Panchari military camp is about

- five miles away...Bengali settlers together with the Village Defence Party (VDP), a civilian force with official status, and the paramilitary Ansars [attacked] Logang.....Hundreds were reportedly burned alive, while villagers who attempted to flee were reportedly shot dead. The paramilitary Bangladesh rifles reportedly arrived on the spot shortly after the killings had begun, but did nothing to stop them." (p. 3).
- 210 Rule 50 (1) states: "A hillman may occupy non-urban *khas* land upto a maximum of 0.30 acres for the purpose of his homestead with the permission of the headman of the *mauza* concerned without obtaining any formal settlement from the Deputy Commissioner."
- 211 Based on author's interviews and discussions with local leaders.
- 212 The Special Affairs Division is responsible for CHT matters and is the highest policy body dealing with CHT questions.
- 213 Col. Oli Ahmed is also the leader of the Government team negotiating with the JSS.
- 214 See *Report on the Visit of the All India Chakma Cultural Conference Team to the CHT Jumma Refugees Relief Camps*, South Tripura, India, on May 26-28 1995 for details.
- 215 See The CHT Jumma Refugees Welfare Association. *Report on the Visit of the Jumma Refugee Team to the Chittagong Hill Tracts (CHT) Bangladesh on March 14-15, 1995* for details. The report provides details of 103 cases of indigenous lands occupied by plains settler families or the security forces (pp. 23-42) which are annexed to this report.
- 216 Report of the Jumma Refugee Team 1995: 9.
- 217 The CHT Jumma Refugees Welfare Association: *The Jumma Refugees Repatriation and their plight in the Chittagong Hill Tracts*, 1 October 1994, p.1.
- 218 Report of the Jumma Refugee Team 1995: 59.
- 219 Tomei, M. & L. Swepston. *Indigenous and Tribal Peoples and the ILO*, ILO Geneva, 1994, p. 22.
- 220 Tomei, M. & L. Swepston 1994: 4.
- 221 The Government of Bangladesh intends to hold a cadastral survey in the CHT, which was to have been resumed in 1993. As a result of major opposition to this proposal from indigenous people and their leaders, it was put on hold. However, the Government has since announced its intention to proceed with the cadastral survey in the Bandarban Hill District (Working Group on Indigenous Populations, UN, Geneva 1995).
- 222 UN Document No. E/CN.4/Sub.2/1994/2/Add.1.
- 223 Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution No. 1994/45 of 26 August 1994.
- 224 Commission on Human Rights Resolution No. 1995/32 of 3 March 1995.
- 225 Report of the Working Group of the Commission on Human Rights (UN Document No. E/CN.4/1996/84).
- 226 UN General Assembly Resolution No. 50/157 of 21 December 1995: *Programme of activities for the International Decade of the World's Indigenous People*.
- 227 Asian Development Bank: *Working Paper on Indigenous Peoples*, 25 October 1994, p. 3.
- 228 Asian Development Bank 1994: 11.
- 229 Asian Development Bank: *Staff Instructions on Certain Policy/Administrative Issues: Indigenous Peoples*, issued on 15 February 1994.
- 230 The Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government.

- ²³¹ UN Commission on Human Rights Resolution 1990/62.
- ²³² Established by Acts 19, 20 and 21 of 1989 in Bandarban, Khagrachari and Rangamati districts.
- ²³³ From the 1950s, the CHT has been represented in the national parliament; subsequently, elected local government institutions were introduced at the union, *thana* (sub-district) and district levels.
- ²³⁴ Roy, Raja Devasish: *The Chittagong Hill Tracts Accord: Looking Ahead*. Paper presented at Winter Workshop on Sources of Conflict in South Asia: Ethnicity, Refugees, Environment, organized by the Regional Centre for Strategic Studies (Colombo) in Nepal, March 1999.
- ²³⁵ Also excepted are the areas within the Reserved Forests, the Kaptai Hydro-Electric Power Plant, the Satellite [Earth] Station at Betbunia, State-owned Industries, and factories and lands recorded in the name of the Government (Clause 26(1), Section B/Kha, CHT Accord, 1997).
- ²³⁶ Statement of Samiran Dewan, Chairman of the Khagrachari District Council from 1989 to 1998, to the UN Working Group on Indigenous Populations (17th Session, July 1999) on: Indigenous Peoples and their Relationship to Land.
- ²³⁷ Ibid.
- ²³⁸ For a detailed discussion of the legality of these land grants, see Bhaumik, op. cit., pp. 173-180.
- ²³⁹ This is based upon telephone conversations and correspondences with a number of people who wish to remain anonymous.
- ²⁴⁰ Statement of Raja Devasish Roy to the UN Working Group on Indigenous Populations, 17th Session, July 1999.
- ²⁴¹ *Prathom Alo*, Dhaka, 11 December 1998.
- ²⁴² Interview with *Prathom Alo*, Dhaka, 3 April, 1999. This account was also published in the *Annual Report of Rehabilitation of Returned Jumma Refugees: 28-02-1998 to 28-02-1999* (JRWA 1999).
- ²⁴³ Interview of Bakul Chakma, representative of JRWA with *Prathom Alo* Dhaka, 10 March 1999.
- ²⁴⁴ Ibid.
- ²⁴⁵ Ibid.
- ²⁴⁶ Report of Rupayan Dewan, Member of JSS Central Committee and Member of CHT Regional Council to UN Working Group on Indigenous Populations (17th Session, July 1999) on: Indigenous Peoples and their Relationship to Land.
- ²⁴⁷ Report from Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh, India, 1999.
- ²⁴⁸ Sudha Sindhu Khisa, JSS representative on the Task Force on Refugees and Displaced People as cited in *Prathom Alo*, Dhaka on 10 March 1999. See also, the Statement of Sudha Sindhu Khisa, published in *Prathom Alo* of 1 August 1999.
- ²⁴⁹ Rupayan Dewan, op.cit.
- ²⁵⁰ Ibid.
- ²⁵¹ Ibid.
- ²⁵² Report of Mrinal Kanti Tripura to the UN Working Group on Indigenous Populations on: Indigenous Peoples and Health, July 1999. See also, *Taungya Newsletter*, No. 1, Issue 1, Rangamati, CHT, November, 1998.
- ²⁵³ Ibid.
- ²⁵⁴ Gain, Philip: Expansion of Reserved Forests Complicates Land Issues in the CHT, *Earth Touch*, No.5/October 1999, p. 32.
- ²⁵⁵ *Prathom Alo*, Dhaka, 7 August 1999.

- ²⁵⁶ Ibid.
- ²⁵⁷ Gain, Philip op.cit.
- ²⁵⁸ Clause 8, Section D/Gha, CHT Accord, 1997.
- ²⁵⁹ Prathom Alo, Dhaka, 27 October, 1999.
- ²⁶⁰ Ibid.
- ²⁶¹ Telephone interview with Raja Devasish Roy, Chakma Chief and Member of the Consultative Committee, CHT Development Board, dated, 18 October, 1999.
- ²⁶² Amena Mohsin: *Chittagong Hill Tracts Peace Accord: Looking Ahead*, The Journal of Social Studies, University of Dhaka, Aug-Oct 1998, pp. 114, 115.
- ²⁶³ Article 2, Section D/Gha, CHT Accord, 2 December 1997.
- ²⁶⁴ Ibid.
- ²⁶⁵ Prathom Alo, Dhaka, 11 December 1998.
- ²⁶⁶ Mohsin, op. cit., pp. 114, 115.
- ²⁶⁷ UN WGIP 1999, op cit.
- ²⁶⁸ Note: This is an example of cultural aggression. Before the arrival of the plains settlers to the CHT there was no place called *Islampur* in this *mauza*. The indigenous place names are arbitrarily changed by the national authorities, civil and military, to strengthen the claims of the plains settlers (Muslims) to the lands of the indigenous peoples. Many place names have been changed to Islamic-oriented ones in order to obliterate all traces of the previous land owners.
- ²⁶⁹ The Upazilla is a unit of civil administration with the UNO as the chief official. This has now been changed to TNO - *Thana Nirbahi Officer*.
- ²⁷⁰ See *Anti-Slavery Report* No. 2 - 1984: 63, 74 for details.

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