

Present state of amendment of CHT Land Disputes Resolution Commission Act 2001

The government of Bangladesh is finally going to amend contradictory provisions of the CHT Land Disputes Resolution Commission Act 2001. On 27 May 2013 the Land Ministry placed a draft amendment bill titled “CHT Land Disputes Resolution Commission Act (Amendment) Bill 2013” before the Cabinet and accordingly on 3 June 2013 the Cabinet approved this amendment Bill. Again, on 16 June 2013 the amendment Bill 2013 has been introduced in the Parliament for adoption. The Parliament sent it to the Parliamentary Stating Committee on the Land Ministry seeking its opinion within 7 days.

However, indigenous leaders expressed their concerns saying that some contradictory provisions have NOT been incorporated properly as per 13-point amendment proposals of the CHT Affairs Ministry and the CHT Regional Council which were consecutively approved by the CHT Accord Implementation Committee (in its 4th and 5th meetings) and Inter-ministerial Meeting held on 30 July 2012 headed by Honorable Law Minister Barrister Shafique Ahmed.

It is observed that out of 13-point amendment proposals, only 10 amendment proposals have been incorporated in the “CHT Land Disputes Resolution Commission Act (Amendment) Bill 2013”. Among them, eight provisions have been placed in conformity with the 13 point proposals and the rest two provisions have NOT been incorporated properly. These include exclusion of the word “practices” in the clauses (a), (b) and (c) of the Sub-section 6(1) and the word “occupied land” in the clause (c) of the Sub-section 6(1).

The word “practices” (usages) is most important in term of land management and administration in the CHT. One of the most crucial examples is mandatory practice to take report or recommendation from the concerned Headman (mouza head) in transferring, settling and acquiring any land of the hill districts whether the concerned land is free from dispute. Considering this importance, CHT Accord of 1997 stipulates to resolve land disputes by the Land Commission in accordance with the existing laws, customs and practices in the CHT. However, government inserted only “existing laws and customs” in the CHT Land Disputes Resolution Commission Act 2001 excluding the word “practices”.

In addition, the 13 point amendment proposals also recommend omission of the proviso of the Sub-section 6(1) which states that this sub-section shall not be applicable in case of Reserved Forests, Kaptai Hydroelectricity Project area, Betbunia Earth Satellite Station, state-owned industries and land recorded with the Government or local authorities.” However, this amendment proposal has NOT been incorporated in the amendment Bill of 2013 which was adopted by the Cabinet on 3 June 2013. If this proviso is retained in the Land Commission Act, then most of the land disputes will remain unresolved.

On the other, the CHT Accord also provides to cancel such lands including fringe land that has been given in settlement or occupied in violation of the existing laws, customs and practices in the CHT. However, the government excluded the word “or occupied” in the CHT Land Disputes Resolution Commission Act 2001. Apart from land disputes of returnee refugees, there are huge lands in the CHT which have been occupied illegally and forcibly. So, if this word “or occupied land” is not inserted in the Act, around 70% of land disputes will be out of jurisdiction from disposal of the Land Commission and will remain unresolved

Besides, there are three important provisions which have totally been missed out in the amendment Bill of 2013. One is related to Quorum. Current provision of the CHT Land Disputes Resolution Commission Act 2001 provides to have Quorum with its chairman and other two members. However, among the members of the Commission, chairman of the Hill District Council and circle chief are directly related to land management and administration in the CHT. So, in order to ensure presence of one of them in resolving land disputes, 13 point amendment proposals include having Quorum with the chairman and other three members. However, the amendment Bill of 2013 excluded this important amendment proposal which may hinder smooth resolution of land disputes in the CHT.

Another one is inclusion of new provision in regard to transfer of the functions of CHT Land Disputes Resolution Commission into the CHT Affairs Ministry instead of the Land Ministry which has NOT been incorporated in the amendment Bill 2013. In fact, in national level, this is the CHT Affairs Ministry on which all matters relating to the CHT affairs have been bestowed to deal with. However, the CHT Land Commission has been kept under the jurisdiction of Land Ministry. Therefore, the 13-point amendment proposals recommend to insert a new provision (Section No. 21) which is to transfer the functions of the CHT Land Commission into the jurisdiction of CHT Affairs Ministry.

Please find attached comparative analysis of 13-point amendment proposals and Amendment Bill adopted by Cabinet on 3 June 2013 for your kind information and action.