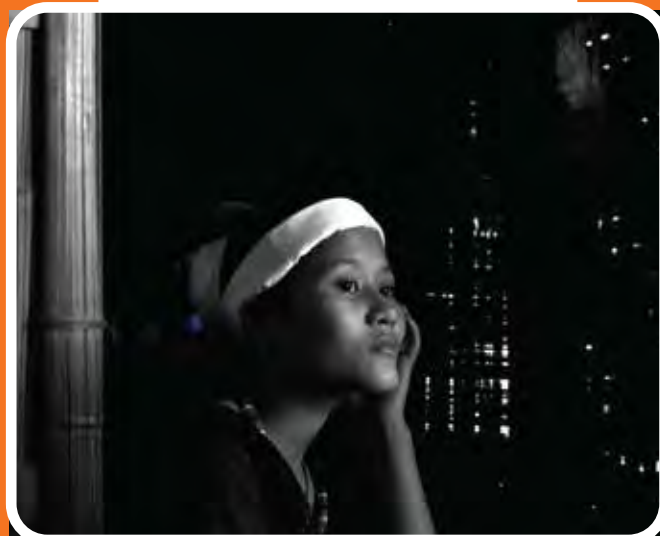


Survival under Threat: Human Rights

Situation of Indigenous Peoples in Bangladesh



Survival under Threat Human Rights Situation of Indigenous Peoples in Bangladesh

Editor
Prof. Mong Shanoo Chowdhury



Survival under Threat: Human Rights Situation of Indigenous Peoples in Bangladesh

August 2014

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Pallab Chakma

Executive Director

Kapaeeng Foundation

Message from the Secretary-General

The publication of this report has come at a time when the Indigenous peoples of Bangladesh are facing increasing challenges to the enjoyment of their human rights including the continuing denial of their existence by the Government of Bangladesh. It also comes at a time when instead of advancing the implementation of the Chittagong Hill Tracts [CHT] Accord, several parties seem to be bent on railroading its substantive implementation. Violence against Indigenous women continues to plague women who are going about their daily chores and girls who are attending schools. There is increased communal violence which has reached an alarming stage. Even the Chittagong Hill Tracts Commission members and staff were attacked twice, once on an official fact-finding mission, and another on a private visit to the CHT by a so-called nationalist group. The impunity that reigns in the CHT is matched by the neglect that is faced by the plain lands Indigenous peoples. Plain lands Indigenous peoples have been so neglected and discriminated that their minoritization and rapid loss of their territories is so alarming. They also do not enjoy any affirmative action from the government except that which is accorded by the Special Affairs Division of the Prime Minister's Office. With the support of the European Union through its European Instrument for Human Rights and Democracy [EIDHR], the Asia Indigenous Peoples Pact (AIPP) implemented the Project *“Strengthening the Network of Indigenous Peoples Human Rights Defenders for the Promotion and Protection of Human Rights of Indigenous Peoples in Asia”* in eight countries including Bangladesh for the period September 2011 – August 2014. Technical support was provided by Kapaeeng Foundation, a member of AIPP. This report is one of the outputs from this project. We hope this report will shed more light to the alarming condition of Indigenous peoples in Bangladesh, and contribute to generating more attention and concern for the respect, promotion and protection of the rights of Indigenous peoples in Bangladesh and beyond.

Joan Carling

Secretary-General

Asia Indigenous Peoples Pact

Editorial

Bangladesh is a land of cultural and ethnic diversity with over 50 Indigenous peoples along with Bengali, the mainstream population, who are domiciled here for centuries. Indigenous communities, with their distinct languages, traditions, cultures, values, and customs, contribute significantly to the beauty, development, and sustainability of the country. Their contribution, manifested in all the elements that make up the country, in fact serves as its source of strength. Ironically, however, the human rights situation of Indigenous peoples in Bangladesh is decidedly in distress. Their human rights enshrined under the international human rights framework are routinely violated either by keeping them unimplemented or leaving them totally ignored. Be it in the ever verdant hills of the Chittagong Hill Tracts (CHT) or in the delta plain, Indigenous peoples face human rights violations of almost identical nature and magnitude ranging from systematic discrimination to gross human rights violations like rape, murder and mass killing. The existence of indigenous peoples therefore, consequent upon persistent infringement of their rights, is now gravely threatened.

Human rights bear with them diverse correlative duties to be obliged by the State – the duties to respect, protect and fulfil the human rights of all the citizens of the country. The duty to respect requires the State refraining from interfering with the enjoyment of the right and the duty to protect requires the prevention of violations of such rights by State authorities as well as by third parties. As a member state of the UN, Bangladesh ratified and acceded to a number of international human rights instruments. Some of these laws have particular relevance to Indigenous peoples in the country. Being a party to these international human rights instruments, Bangladesh state has the obligation to respect, protect and fulfil the rights of its Indigenous peoples. However, there are frequent allegations that different state agencies are often engaged covertly or overtly in interfering with the enjoyment of the human rights of Indigenous peoples. On the other hand the State, by and large, appears to be either unconcerned or hesitant to prevent violation of human rights by State agencies and other non-state actors. There are, however, instances of some initiatives by the State as well, though inadequate and minimal than what is desired, towards protection and promotion of the rights of ethnic minorities including indigenous peoples in the country.

In recent years, we come across with some initiatives by a number of human rights and civil society organizations to document, report, and publish human rights situations of indigenous peoples in Bangladesh. A number of academics, researchers, and practitioners in the country as well, have ventured into documenting the predicaments that the indigenous peoples are thrust in.

However, given the dire situation that indigenous peoples are wedged in, the number and the output of such studies and publications falls far short of the needs of effective advocacy, necessary for the protection and promotion of human rights of all indigenous peoples in Bangladesh.

This book is the continuation to present state of the human rights of Indigenous peoples in Bangladesh as an update of the “Indigenous Peoples’ Human Rights Report in Asia 2008 Bangladesh-Burma-Laos: Towards Social Justice and Sustainable Peace” published by the Asia Indigenous Peoples Pact. In spite of our efforts to make this publication a comprehensive one inclusive of major human rights issues relating to indigenous peoples of Bangladesh, we could not, unfortunately, make it up at the end. We could not accommodate some important thematic areas like environment and climate change, disability, sexual orientation, refugees and internally displaced persons, development, extractive industries, energy plants etc. having symbiotic links to indigenous communities. We would be happy to see further in-depth study and research not only on the issues that this publication covered but also on areas left out of the gamut of this work to provide a larger and clearer picture on the rights situations of indigenous peoples in Bangladesh. We deem our efforts in bringing out this publication is rewarded when it succeeds in removing the barriers that prevent exposing the incidents of human rights violations in the country. We would equally consider our endeavor worthwhile if this document proves useful as an advocacy tool in addition to serving as a handy instrument to educate both indigenous and non-indigenous people, their organizations and the government with regard to indigenous peoples’ rights in order that a progressive and affirmative change could be brought about in support of their lives.

Prof. Mong Shanoo Chowdhury

August 2014

Acronyms

ADP	Annual Development Programme
AIPP	Asia Indigenous Peoples Pact
BIPF	Bangladesh Indigenous Peoples Forum
BCS	Bangladesh Civil Services
BGB	Border Guard Bangladesh
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBD	Convention on Biological Diversity
ICCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Covenant on Economic, Social and Cultural Rights
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHT	Chittagong Hill Tracts
CHTDB	Chittagong Hill Tracts Development Board
CHTRC	Chittagong Hill Tracts Regional Council
CRC	Convention on the Rights of the Child
DC	Deputy Commissioner
GoB	Government of Bangladesh
HDC	Hill District Council
IDPs	Internally Displaced Persons
ILO	International Labour Organisation
IPO	Indigenous Peoples Organisation
IPs	Indigenous Peoples
JAP	Jatiya Adivasi Parishad
MLE	Multilingual Education
MoCHTA	Ministry of Chittagong Hill Tracts Affairs
MP	Member of Parliament
NHRC	National Human Rights Commission
PCJSS	Parbatya Chattagram Jana Samhati Samiti
PRSP	Poverty Reduction Strategy Paper
SAD	Special Affairs Division
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Issues
UN-REDD	United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation
VAIW	Violence Against Indigenous Women

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Photo : Shingkhani Marna

CHAPTER-I

An Overview of Indigenous Peoples in Bangladesh

Binota Moy Dhamai*

1. Introduction

Bangladesh is home to diverse cultures and languages. Apart from the Bengalis, more than 48 Indigenous communities have been living in different parts of Bangladesh since time immemorial. Historically, Indigenous peoples of Bangladesh have been at the forefront of various struggles against feudalism and colonialism, and many members of these communities also took active part in the 1971 Liberation War of the country. However, despite such contributions, Indigenous peoples in Bangladesh are one of the most deprived, neglected and discriminated groups in all sectors. Their movement and organization against the rulers, colonizers, and feudal lords should have been part of the history of the country. Unfortunately, these engagements and sacrifices have never been recognized adequately, if at all, in the national history. In general, there has been little recognition of their contributions to the building of the nation and larger society in mainstream public discourses in Bangladesh.

2. Demography of Indigenous Peoples

Indigenous peoples in other parts of the 'plains' Bangladesh are located mainly in the border regions in the northwest (Rajshahi-Dinajpur), central north (Mymensingh-Tangail), northeast (Greater Sylhet), south and southeast (Chittagong, Cox's Bazar and Greater Barisal). According to 2011 Census, the country's Indigenous population is approximately 1,586,141 which represent 1.8% of the total population of the country. However, the plain land Indigenous peoples claim that their population is estimated at about 2.0 million. Among them, the Santal are the most numerous, constituting almost 30% of the Indigenous population of the plains, followed by the Garo, Hajong, Koch, Manipuri, Khasi, Rakhain and other groups.

In the Chittagong Hill Tracts (CHT), eleven Indigenous ethnic groups such as Chakma, Marma, Tripura, Tanchangya, Mro, Lushai, Khumi, Chak, Khiyang, Bawm and Pangkhua who collectively identify themselves as the *Jumma* people (High Landers). They have been living in the CHT for centuries. In addition, a very small number of descendants of Assamese and Gorkhas also live in the CHT.

Demographic engineering has been used by the state machineries to make Indigenous peoples cornered, outnumbered or displaced in their own localities. With regard to the plains, the nature and extent of minoritisation is generally even sharper. This is a form of ethnic cleansing that has been active for decades. For example, in 1964 and 1965, communal riots were induced to evict Garos, Hajongs, Kochs, Dalus and other Indigenous peoples in Greater Mymensingh from their territory¹. Most Indigenous communities in the plains form small pockets or enclaves in an otherwise Bengali-populated area.

In the CHT region, the Indigenous peoples constituted 97.5% of the total population in 1947, but this ratio decreased to around 51% in 2014. The number of non-Indigenous people increased unexpectedly through a government population transfer ('rehabilitation') program that was carried out in order to outnumber the local Indigenous population. There were massive waves of transmigration of Bengali settlers organized by the military and civil administration during 1979–85 as part of the counter insurgency strategy of the state against the *Pahari* ("Hill People") rebels led by the PCJSS². In the process, many Indigenous communities were systematically and forcibly evicted from their settlements and many of their lands were redistributed by the state to in-migrating Bengali settlers with little concern for the former's pre-existing land rights³. From the point of view of the Indigenous peoples, one major concern in the CHT is the widespread perception that Bengali government employees including members of the law enforcement agencies are active agents of this demographic engineering, a hidden agenda of the government, and that they engage in communal activities against local *Jumma* Indigenous peoples. In the plain lands, particularly in North Bengal, large numbers of



1 A brief account the human rights situation of Bangladesh; published in 2008 by Asia Indigenous Peoples Pact (AIPP), Chiang Mai, Thailand.

2 Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh by Shapan Adnan & Ranajit Dastigar, 2011, Page 42.

3 Ibid

Indigenous peoples have been facing discriminations of all kinds, with many silently crossing the borders with India due to insecurity. Many of them have lost their traditional lands, faced eviction, and become displaced.

The demographic engineering that was orchestrated on the ground made Indigenous peoples vulnerable by throwing open their livelihoods and distinct cultures to abject risks. Large scale population transfer to Indigenous peoples' territory has drastically changed the demographic composition of the CHT region. And this, in turn, has negatively influenced the cultures and socio-economic development of Indigenous peoples. There is at present huge pressure on land and its management system, and we have come to witness numerous incidents of displacement and eviction of Indigenous peoples from their ancestral territories. The lack of respect for the existing land rights and customary practices of the Indigenous peoples has also contributed to cause growing insecurity of and violence against Indigenous women, both in the CHT and in the plains.

Table 1:
Trend of demographic and ethnic composition in CHT

Year	Indigenous Jumma population		Bengali population		Total	Source
	Population	%	Population	%		
1871	--	--	--	--	63,054	
1881	--	--	--	--	101,597	
1891	--	--	--	--	107,286	
1901	--	--	--	--	124,762	
1911	--	--	--	--	153,830	
1921	--	--	--	--	173,243	
1931	--	--	--	--	212,922	
1941	239,783	97.06	7,270	2.94	247,053	Census 1941
1951	269,177	93.71	18,070	6.29	287,247	Census 1951
1961	339,757	88.23	45,322	11.77	385,679	Census 1961
1970	--	--	66,000	--	66,000	PCJSS statistics
1974	392,199	77.17	116,000	22.83	508,199	PCJSS statistics
1981	441,744	58.77	313,188	41.48	754,962	Census 1981
1991	501,144	51.40	473,301	48.60	974,445	Census 1991
2001	736,682	54.86	606,058	45.14	1342,740	Census 2001
2011	845,541	52.90	752,690	47.10	1598,231	Census 2011

Table 2:
List of Indigenous Peoples of Bangladesh⁴

Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
1.	Chakma	CHT Regulation-1900 & SEGCI Act 2010	252858	Rangamati, Khagrachari, Bandarban, Chittagong & Cox's Bazar district
2.	Marma	CHT Regulations 1900 & SEGCI Act 2010	157,301	Rangamati, Khagrachari & Bandarban
3.	Tripura	CHTRC Act & SEGCI Act 2010 1998	81014	Rangamati, Khagrachari, Bandarban, Sylhet, Chittagong, Rajbari, Chandpur & Comilla
4.	Mro	CHTRC Act 1998 & SEGCI Act 2010	22,304	Rangamati & Bandarban
5.	Tanchangya	CHTRC Act 1998 & SEGCI Act 2010	21639	Rangamati & Bandarban
6.	Bawm	CHTRC Act 1998 & SEGCI Act 2010	13,471	Rangamati & Bandarban
7.	Pangkhua	HDC Act 1998 & SEGCI Act 2010	3,227	Rangamati & Bandarban
8.	Chak	CHRC Act 1998 & SEGCI Act 2010	2127	Rangamati & Bandarban
9.	Khyang	CHTRC Act 1998 & SEGCI Act 2010	2343	Rangamati & Bandarban
10.	Khumi	CHTRC Act 1998 & SEGCI Act 2010	1241	Rangamati & Bandarban
11.	Lushai	CHTRC Act 1998 & SEGCI Act 2010	662	Rangamati & Bandarban
12.	Koch	EBSAT Act 1950 & SEGCI Act 2010	16567	Mymensingh, Tangail, Sherpur, Netrokona, Gazipur

⁴ Author is grateful to Mangal Kumar Chakma in formulating this list of Indigenous ethnic groups.

Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
13.	Santal	EBSAT Act 1950 & SEGCI Act 2010	202,162	Dinajpur, Rajshahi, Noagaon, Bogra, Chapainawabganj, Rangpur, Panchaghar, Natore, Thakurgaon & Sylhet Tea Garden
14.	Dalu	EBSAT Act 1950 & SEGCI Act 2010		Mymensingh, Sherpur, Jamalpur
15.	Rakhain	BIPF 2005 & SEGCI Act 2010	16,932	Cox's Bazar, Borguna, Patuakhali
16.	Monipuri	Census of 1991 & SEGCI Act 2010	24, 882	Moulvibazar, Sylhet, Habiganj, Sunamganj
17.	Garo/Mandi	EBSAT Act 1950 & SEGCI Act 2010	64,280	Mymensingh, Tangail, Sherpur, Netrakona, Gazipur, Rangpur, Sylhet, Sunamganj, Moulvibazar
18.	Hajong	EBSAT Act 1950 & SEGCI Act 2010	11,540	Mymensingh, Sherpur, Netrokona, Sylhet, Sunamganj
19.	Khasi	Census of 1991 & SEGCI Act 2010	12,280	Moulvibazar, Sylhet, Sunamganj
20.	Oraon	EBSAT Act 1950 & SEGCI Act 2010	8,216	Dinajpur, Rajshahi, Naogaon, Bogra, Chapainawabganj, Rangpur, Panchaghar, Natore, Tjakurgaon, Pabna
21.	Khotrio Barman	BIPF 2005 & SEGCI Act 2010		Dinajpur, Rajshahi, Gazipur
22.	Mal Pahari	Census of 1991 & SEGCI Act 2010	1,853	Dinajpur, Rajshahi, Naogaon, Bogra, Chapainababganj, Rangpur, Panchaghar, Natore, Thakurgaon, Pabna

Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
23.	Munda	EBSAT Act 1950 & SEGCI Act 2010	2,132	Dinajpur, Rajshahi, Naogaon, Bogra, Chapainababganj, Rangpur, Panchagarh, Natore, Thakurgaon, Tea Garden of Sylhet
24.	Kol	BIPF 2005 & SEGCI Act 2010		Rajshahi, Sylhet

The Small Ethnic Groups Cultural Institutes (SEGCI) Act 2010 recognized only 27 out of more than 50 Indigenous ethnic groups in Bangladesh. Two Indigenous ethnic groups, Usai and Mong, included in the list of 27 ethnic groups do not exist in reality, while another group named Usui mentioned in this list is one of the clans of Tripura. The list given above has been prepared excluding the said three ethnic groups from the list of 27.⁵ It is to be mentioned that Ministry of Cultural Affairs formed a committee⁶ headed by then State Minister for Cultural Affairs, Advocate Promode Mankin MP to identify the Indigenous ethnic groups missed out from the list prepared earlier. The following ethnic groups were finalised to include in the list by the said committee:

Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
25.	Mahato	Census of 1991 & MoCA 2013	3,534	Dinajpur, Rajshahi, Bohura, Pabna, Sirajganj, Jaipurhat
26.	Khond	BIPF 2005 & MoCA 2013		Sylhet
27.	Gond	EBSAT Act 1950 & MoCA 2013		Rajshahi, Dinajpur

5 Interview of Sanjeeb Drong, General Secretary of BIPF by Mangal Kumar Chakma, advisor of Kapaeeng Foundation August 2014.

6 Other members of this committee were (1) then State Minister for Ministry of CHT Affairs, Dipankar Talukdar MP, (2) Secretary of Ministry of Cultural Affairs, (3) Director-General of Shilpakala Academy, Liyakat Ali Lucky, (4) Prof. H K S Arefin, Department of Anthropology of Dhaka University, (5) Dr. Inoon Nahar, Department of Anthropology of Jahangirnagar University, (6) Sanjeeb Drong, General Secretary of BIPF, (7) Rabindranath Soren, President of Jatiya Adivasi Parishad and Chairperson of Kapaeeng Foundation, (8) representative of Tribal Welfare Association, (9) Directors of Rangamati, Bandarban, Cox's Bazaar and Netrokona Small Ethnic Group Cultural Institutes.

Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
28.	Gorait	KF 2011 & MoCA 2013		Rajshahi, Natore, Naogaon
29.	Malo	BIPF 2005 & MoCA 2013		Dinajpur, Rajshahi, Naogaon, Boghura, Chapainababganj, Rangpur, Panchaghar, Natore, Takurgaon, Pabna
30.	Turi	EBSAT Act 1950 & MoCA 2013		Rajshahi & Dinajpur
31.	Teli	KF 2011 & MoCA 2013		Rajshahi, Natore, Dinajpur, Sylhet, Chapainawabganj
32.	Patro	BIPF 2005 & MoCA 2013		Sylhet
33.	Banai	EBSAT Act 1950 & MoCA 2013		Mymensingh, Sherpur, Jamalpur
34.	Bagdi	BIPF 2005 & MoCA 2013		Kustia, Natore, Jhenaidah, Khulna, Jessore
35.	Bedia	BIPF 2005 & MoCA 2013		Sirajganj, Chapainababganj
36.	Boraik	BIPF 2008 & MoCA 2013		Jhenaidah, Magura, Jessore, Sirajganj, Pabna
37.	Bhumij	KF 2011 & MoCA 2013		Rajshahi
38.	Musohor	BIPF 2005 & MoCA 2013		Rajshahi, Dinajpur
39.	Mahali	BIPF 2005 & MoCA 2013		Rajshahi, Dinajpur, Bogra
40.	Rajuar	BIPF 2005 & MoCA 2013		Rajshahi
41.	Lohar	KF 2011 & MoCA 2013		Naogaon, Rajshahi, Chapainawabganj
42.	Shobor	MoCA 2013		Sylhet
43.	Hodi	MoCA 2013		Sherpur, Mymensingh

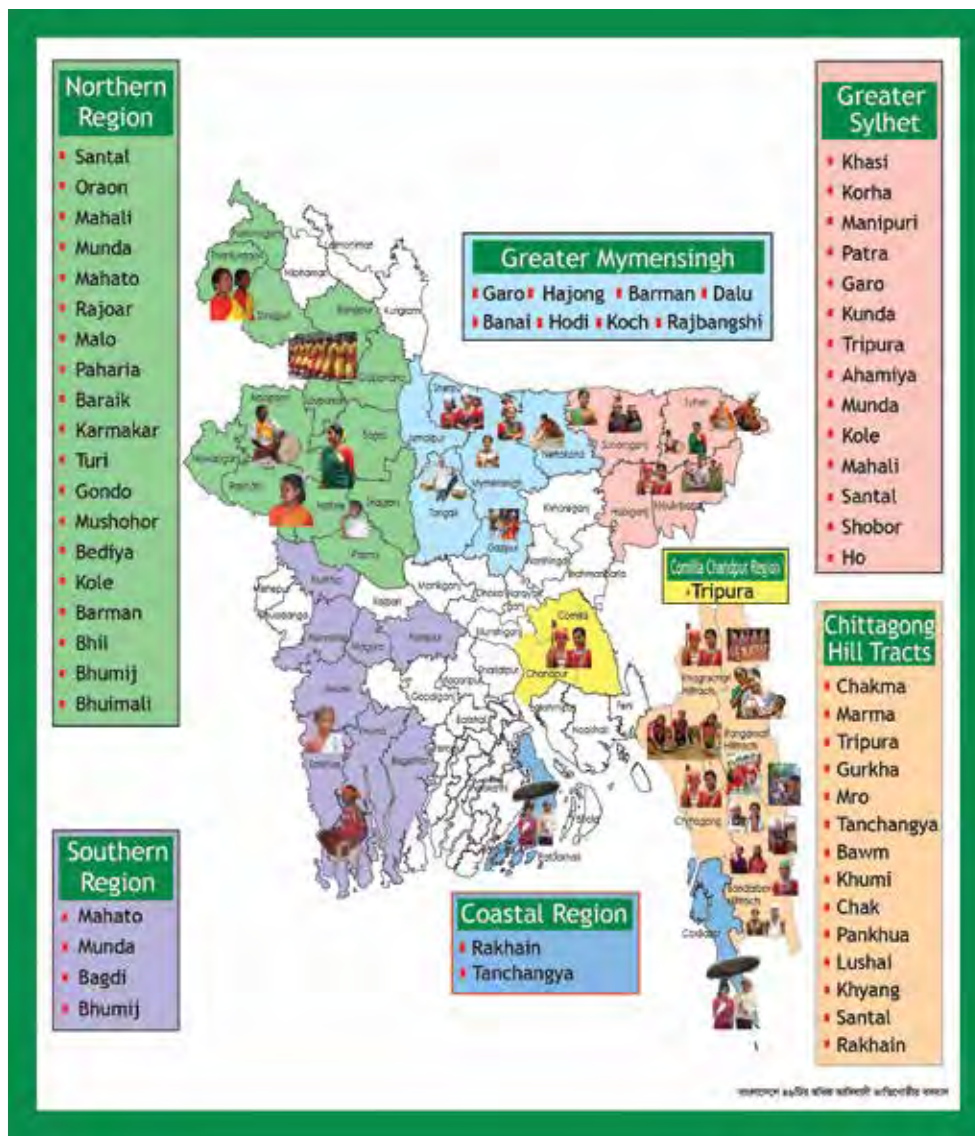
Sl. No	Indigenous Ethnic Groups	Sources	Populations (1991)	Districts where Indigenous peoples live
44.	Ho	MoCA 2013		Sylhet
45.	Korha	MoCA 2013		Sylhet
46.	Bhil (Vil)	MoCA 2013		Dinajpur, Naogaon
47.	Bhuimali	MoCA 2013		Dinajpur
48.	Ghorkha	BIPF 2005 & MoCA 2013		Rangamati

Though not identified by the government whatsoever, following ethnic groups also identify themselves as Indigenous peoples.

1.	Kormokar	BIPF 2005		Rajshahi, Chapainababganj
2.	Kharia	EBSAT Act 1950		Sylhet
3.	Pahan	BIPF 2005		Rajshahi
4.	Muriar	BIPF 2005		Rajshahi, Dinajpur
5.	Rai	BIPF 2005		Rajshahi, Dinajpur
6.	Singh	BIPF 2005		Pabna
7.	Chai	KF 2011		Rajshahi
8.	Jarhi	KF 2011		Rajshahi, Naogaon
9.	Bhuiyan	KF 2011		Naogaon & other districts
10.	Assam	BIPF 2005	400	Rangamati, Sylhet

SEGCI Act : Small Ethnic Group Cultural Institute Act 2010
 HDC Act : Hill District Act 1989
 EBSAT Act : East Bengal State Acquisition & Tenancy Act 1950
 BIPF : Bangladesh Indigenous Peoples Forum's list 2005
 KF : Kapaeeng Foundation's list 2011
 MoCA : Ministry of Cultural Affairs' list 2013

Map 1:
Concentration of Indigenous Peoples in Bangladesh



Source: Kapaeeng Foundation

3. Issue of Identity of Indigenous Peoples

Many of the Indigenous peoples who found their entries into the list prepared by the Small Ethnic Group Cultural Institutes trace their origin to the greater Mongoloid race. The Indigenous communities of the CHT (Rangamati,

Khagrachari and Bandarban), coastal (Chittagong, Cox's Bazaar, Patuakhali, Borguna) and north-eastern region (Greater Sylhet) are the descendants of this race.⁷

Indigenous communities in Bangladesh including the Santal, Oraon, Munda, Mahali and Malo are of Austric speaking Proto-Australoid race. They live mostly in north-western (Rajshahi-Dinajpur) and south-western (Barishal, Khulna, Jessore) region of Bangladesh. They are the original habitants of Bangla, Odisha and Kalinga of the Indian sub-continent, and lived in this landmass even before the Arians arrived.

The history of the earliest people who initially arrived in Bangladesh is unknown. In ancient times, the entire region was under the cover of deep jungles. In those days Southern Bangladesh was under deep sea. The Indigenous peoples such as Koch, Garo, Mro, Hajong, Kuki, Khasia and Santal used to live in this thickly covered forest region. Traces of their descendants can still be found in the north, north-east, and south-eastern Bangladesh. They relied on *Jum* (shifting) cultivation and hunting of wild animals for their survival.⁸

Many believe that a significant number of ethnic Bengalis both in Bangladesh and in West Bengal of India is of Indigenous descent. According to classical anthropologists, they are either members of Austro-Mongoloid or Mongol-Dravidian race. If so, it is likely that ancestors of ethnic Bengalis would be any of the Santal, Munda, Oraon, Mahalis or similar other Indigenous groups.⁹ Therefore, it can be said that Bengalis are a mixed race whose early bloodline is rooted in the ancestry of the ancient Indigenous peoples.

On the other hand, since the pre-historic period, groups with ethnic Mongoloid origin were on records to have lived from the mountains of Himalaya to north-eastern India, mid-north, north-eastern, south-eastern and coastal region (greater Mymensingh, greater Sylhet, greater Comilla, greater Chittagong and CHT) of Bangladesh, which even extended to the border of Arakan. Similarly, during the medieval age, Assam, North Bengal, and some parts of Bangladesh were inhabited by Kachari, Ahom, Kamata, Chutia and similar other ethnic groups of Mongoloid origin. The Kingdom of Tripura *Maharaja* (great king) extended even to the further south with an area comprised of present day's Sylhet, Comilla, Feni, some parts of Chittagong, Chandpur and eastern bank of

7 Bangladesher Adivasi, an ethnographic research, edited by Mangal Kumar Chakma, James Ward Khokshi, Pallab Chakma, Mong Sing Neo Marma and Helena Bably Talang, published by Bangladesh Indigenous Peoples Forum and Utsa Prokashan, Dhaka, 2010.

8 Bhumi Jarip O Bhumi Byabastapana (Land Survey and Land Management), Sixth Edition, Md. Abdul Kader Mian, 21 November 1995, p-1.

9 Devasish Roy, Cultural Rights of Adivasi Peoples and the Indigenous Roots of Bengali Culture, Amani Kok, Hill Tracts NGO Forum, August 2002

Meghna. The present Chittagong Hill Tracts and a part of Chittagong (extended to Feni River) were under sovereign kingdom of the Chakma people. History also suggests that the said kingdom was also under the Kingdom of Arakan at times.¹⁰

In the course of time, major ethnic groups have dominated the territories of Indigenous peoples with relatively weak economic and military power and pushed their territories into geographically and environmentally vulnerable areas. In some cases, Indigenous groups, whose territories had been pushed to a relatively vulnerable position, were given with limited self-governance. And majority of the ethnic groups were pushed back gradually by the state power which got them finally into the present geographic boundaries. They were forced to go under the control of the institutions of the States and the dominant majority people.

Therefore, historically, Bangladesh is a country with diverse language, religion and ethnicity. However, existence of Indigenous groups and their diverse cultural practices have remained unrecognized both by the State and its mainstream population due to their extremely chauvinistic mindset. It resulted in majoritarian domination over and repression of political, cultural, economic and social life of Indigenous peoples which keeps on continuing even today. Such a situation has aggravated their vulnerability further.

Soon after the liberation of Bangladesh, recognition of the distinct identities of the Indigenous peoples emerged as one of the most important issues in the backdrop of the process initiated to construct the identity of the new nation just born. The fact that there were groups who were generally known by such terms as “tribal” or “Adivasi” – or by other terms such as “Hill People” or “*Pahari*” to stand for Indigenous peoples living in the CHT – was simply ignored while adopting the first national constitution in 1972. Although these groups were not regarded as ‘Bengali’, those who drafted the constitution chose to define the national identity of the people of this country by the same name, thereby failing to accommodate the distinct identities of the Indigenous peoples or “Adivasis” who deprived of their legitimate identity and safeguards continued to become marginalized in the process. The negative attitude on the part of those in power that was behind this situation is still there to date, marking a failure of the promises of democratic pluralism inherent in the country’s independence movement of 1971.

Indigenous peoples in Bangladesh have been involved in movements at the national level, seeking constitutional recognition and special measures to

10 Dr. A.M. Serajuddin, ‘The Chakma Tribe of Chittagong Hill Tracts in the 18th century: Journal of Royal Asiatic Society, No- 1, 1984’ by and Sunity Bhushan Kanungo, ‘Chakma Resistance to British Domination’, 1998

protect them against inequality and non-discrimination. In 1972, while amending the national constitution, the then Member of the Constituent Assembly from the CHT, Manabendra Narayan Larma (also known as MN Larma), raised the issue of and demanded the recognition of Indigenous peoples in the national constitution, and called for provision of a special status of the CHT in order to protect and promote their cultures, languages, histories, traditions, customs and so on. The then *Awami League* led government, however, ignored such appeals while adopting the national constitution at the Constituent Assembly in a way as mentioned already. As a consequence of such attitudes, the CHT region would soon become a site of an organized Indigenous movement that sought constitutional recognition, equal rights and non-discrimination for the *Jumma* peoples of the CHT, protesting and resisting continual human rights violations against Indigenous peoples of the region.

While consulted in the course of the 15th Amendment of the constitution in 2011, representatives of Indigenous peoples in Bangladesh again submitted a proposal with some demands including that of constitutional recognition of their identity as “Indigenous Peoples” or “Adivasi”. The National Assembly, however, passed the 15th Amendment of the National Constitution on 30 June 2011, without any mention of ‘Indigenous Peoples’ or ‘Adivasi’. Instead, the amended Constitution introduced the terms tribes (*upajati*), minor races (*khudro jatishaotta*), ethnic sects and communities (*nrigoshthi o shomprodai*) to be used instead of ‘Indigenous peoples’. It also says that all the people of Bangladesh will be known as Bangalees (Article 6.2)¹¹. This has violated the rights of self-determination, determining own identity as Adivasi/Indigenous peoples, instead, forcing the Indigenous peoples to use another identity.

Over the years, majority of non-Indigenous peoples have had stronger negative attitudes towards Indigenous peoples, a situation that continues to be reflected in many places in Bangladesh. Many Indigenous communities or individuals often face racial discrimination, inequality and deprivation at the local level. Despite the 15th Amendment of the national constitution, where it is stated that “all citizens are equal before law and are entitled to equal protection of law”¹² and that there will be no “discrimination against any citizen on grounds of religion, race, caste, sex or place of birth,”¹³ there has been little evidence so far of widespread respect for, or attempt to exercise these particular ideals in relation to Indigenous peoples of the country.

4. Political Structures of Indigenous Peoples

The legal and administrative system in the CHT is separate and distinct from those in other parts of the country. The general administrative setup does

11 Indigenous World 2012: Bangladesh Chapter, IWGIA.

12 Article 27, The Constitution of the People’s Republic of Bangladesh.

13 Article 28(1), The Constitution of the People’s Republic of Bangladesh

equally exist in CHT i.e. elected bodies of people's representatives at three levels – Union, Upazila and National level – along with the implementing line agencies at Upazila, District and National level. Alongside there are decentralised government institutions in CHT i.e. CHT Regional Council at regional level and Hill District Councils at district levels. In addition to the above institutions, the CHT has a three tier traditional structure based on the customs of the local Indigenous hill people with Circle Chiefs, and Headmen at *Mouza* and *Karbaries* at village levels. The Headman is responsible for resource management, land and revenue administration, maintenance of law and order, and the administration of tribal justice, including as an appellate authority over the *Karbari's* judicial functions. The traditional institutions such as the offices of Raja-Headman-*Karbari* have been integrated into the democratic institutions like the CHT Regional Council, Hill District Councils, and CHT Land Dispute Resolution Commission etc. This involvement has opened up a scope to get the traditional system involved in development sector. All of these institutions are supervised by a new ministry, the Ministry of Chittagong Hill Tracts Affairs (MoCHTA). These are reflective of the distinct socio-political, cultural and historical background of the region.

The Special Affairs Division (SAD) under the Prime Minister's Office is responsible for the development and other affairs of the Indigenous peoples of the plains. The SAD undertakes development programmes in 62 Upazilas under 32 districts, implementing its small-scale Indigenous people development activities through District and Upazila Administrations. However, there is a push by plain land Indigenous peoples to have a separate ministry for their development. In conjunction with the SAD, various line departments and other autonomous corporations and agencies of the Government also include Indigenous peoples in their regular development programmes.

The Indigenous peoples of plain lands have traditional institutions. In the border regions in the northwest region (Rajshahi-Dinajpur), Indigenous peoples, particularly, the Santal community have structure of traditional institution, such as (1) *Para Parishad* (village council) constitutes with families of a village (2) *Pargana Parishad* and (3) *La'bir Parishad*. A traditional leader named *Manjhi* is in charge of a *Para Parishad* while a *Pargana* heads a *Pargana Parishad*. *Pargana Parishad* is formed with all *Manjhi* of all villages under *Pargana* (like a district). Appeal against the decision of the *Manjhi* shall lie with the *Pargana* as the case may be. Any aggrieved persons may first go to a *Manjhi* with complaints. If they are not satisfied with the remedy given by *Manjhi*, they may go to *Pargana*. And *La'bir* is the head of hunting known as *Dihri*. But currently these traditional structures of political and social organisations do not work properly. Most crucial issue for these traditional institutions is absence of awareness about or recognition of the administrative roles of the traditional institutions and leaderships among the government officials and policy makers.

In central north region (greater Mymensingh-Tangail districts), Indigenous Garo (Mandi) ethnic group have a traditional institution which is called as *Nokma* (traditional head of a village) and the traditional institutions of Indigenous Khasi community in northeast region (Greater Sylhet) is called as *Mantri* (Traditional head of a *Punji* or village). These traditional leaders lead the traditional justice system and major decision-making process of their respective communities. The Indigenous peoples of these regions are familiar and comfortable with the traditional customary social systems and these system form the basis for decision making at local levels within communities. This remains the most common way of resolving disputes and conflicts.

The participation of Indigenous women in these traditional institutions of the country is very little and limited. For example, the post of Raja or ‘Circle Chief’ in CHT is a hereditary position being practiced for generations. In case of the Chakma Circle the eldest son of the King is the heir of the Royal Throne. Appointments of Headmen are not hereditary ones, but priority is given to the son of Headman for appointment.¹⁴ The Indigenous women from the plains are merely represented in traditional institutions as well as political agendas. The traditional leadership as well as social system has been running without any representatives of women in the key positions in plain land Indigenous communities. Even the matrilineal Khasi and Garo community are no exceptions. The majority of the *Montri* in Khasi and *Nokma* in Garo are male.

5. Livelihood of Indigenous Peoples in Bangladesh

For Indigenous peoples, land is the basis of livelihood. They have used the land, forests and water bodies in their territories for farming, hunting, gathering and fishing. The relationship to land, however, goes beyond economics; it also has social and cultural dimensions.¹⁵ Land rights and land management systems of Indigenous peoples are largely based on their customs and traditions, and are not necessarily associated with any written documents for land tenure. But Indigenous practices, traditions, and customary laws for land rights as passed down from generations to generations are often not recognized or understood by those who are only familiar with systems and policies that are based on so-called “legal” documents. Thus, in Bangladesh, lands belonging to Indigenous peoples have often been declared as “*Khas*” land or state land, or are easily classified, albeit wrongly and unfairly, as reserve forests, eco-parks, and so on.

¹⁴ Strengthening the Role of Traditional and Elected Leaders, Local Governance Capacity Development (LGCD), Technical Assessment Report, UNDP-CHTDF, Dhaka, July 2006.

¹⁵ Human rights in the case of globalization and economic liberalization by Binota Moy Dhamai, Published in Songhati 2013 by Bangladesh Indigenous Peoples Forum.

Indigenous peoples are represented disproportionately among both the poor and extreme poor. They are one of the most backward groups of the society. Though they have been living within the territory of the country as citizen, they cannot enjoy the civil and fundamental rights of the citizen. They have continuously been targeted to aggression and attack and eviction from their ancestral lands. These problems are slowly but steadily resulting in their marginalization and corroding their social fabric.

In the plains, most of the Indigenous peoples today are farmers, sharecroppers or wage labourers. 85% of the Indigenous peoples of the north-western region are landless and the literacy rate among them sits at around 9%¹⁶. Many of the Indigenous peoples in the plains live on the lands they owned in the past, but which they lost to land-grabbing, and a lack of government oversight and investment into sustainable development on these lands. The disadvantaged situation of Indigenous peoples in the country stems from non-recognition of customary land ownership and its use. Overall, livelihood conditions of the Indigenous peoples of the plains, just as with like those in the hills, are much worse than the national average as evident from a study which revealed that hard core poor and absolute poor among the indigenous peoples is 24.6% and 59.9% compared to national averages of 17.9% and 39.5%, respectively¹⁷.

Those suppressive policies along with other factors are one of the causes of gradual disempowerment of this community. The Santals are the largest Indigenous group in the plains of Bangladesh. A survey done by *Jatiya Adivasi Parishad* (National Indigenous Council) in 2008 shows that 1,983 Indigenous families in 10 northern districts of Naogaon, Natore, Bogra, Rangpur, Rajshahi, Joypurhat, Chapainawabganj, Thakurgaon, Dinajpur and Panchagarh, had lost a total of 1,748 acres of land in recent times to Bengali land-grabbers and the Forest Department.¹⁸

The effects of deforestation and tourism development are also shared by Garos in Madhupur, greater Mymensingh who are under threat of eviction. Tensions due to disputed ownership over land are a persistent issue amongst most Indigenous peoples in the country. The Rakhaines who were once prosperous in the south and south-eastern parts of Bangladesh have already lost most of their lands.

In the north-eastern region of greater Sylhet, the Khasi peoples' livelihood is unique, as their economy is mostly dependent on betel leaf farming. The type of betel leaves they produce get good value in the market. However, most of them do not have registered land and live on *Khas* land and lands 'officially'

16 Country Report on Indigenous Peoples of Bangladesh, DANIDA, 2001.

17 Life and Land of Adibashis; by Abul Barkat, Mozammel Hoque, Sadeka Halim and Asmar Osman; 2009.

18 The Daily Star, 11 May 2008.

belonging to the Forest Department. Since the particular betel leaf vines they cultivate need big trees of natural forests, the Khasi people's livelihoods depends on how well they can protect and conserve the natural forests. But their livelihoods are constantly under threat from illegal loggers; the situation worsened with development of ecotourism facilities on their ancestral lands.

One of the most common and suitable form of cultivation in the CHT is *Jum* cultivation (shifting cultivation). Previously, *Jums* not only provided sufficient food to feed the families, but also created surplus for them. With the reduction of available land for cultivation, with the pressure of population growth, and with some restrictions in *Jum* cultivation, the CHT, once a food surplus area, has now turned into food deficit area. Besides the *Jums*, plough cultivation is also practiced by the Indigenous people in the plain lands available mostly in the river valleys. As a result, the people of CHT were self-sufficient in food and other daily necessities. But the situation is quite different now.¹⁹

The poverty in rural CHT is highly pronounced compared to rural Bangladesh (about 1.6 times higher). On the whole, over 62% households in the region, irrespective of ethnicities, are living below the absolute poverty level, while about 36% are hard-core poor. The community-wise analysis depicts no better scenario. It is notable that about 59% of the Bangalee households in CHT are absolutely poor, and about 31% are hard-core poor. The prevalence of the absolute poor and hard-core poor among Indigenous peoples are 65% and 44% respectively. On the other, the proportion of absolute poor among the Lushais, the Bawms, the Chaks, the Khyangs and the Pangkhuas ranges between 80% and 93%.²⁰ Food mapping by the World Food Programme also shows that CHT region is one of the food shortage regions in the country. Among others, the main reasons behind to it are man-made crisis in CHT, such as, construction of Kaptai dam, government-sponsored population transfer programme, unsustainable and top-down development approach etc.

Indigenous women in Bangladesh are one of the most vulnerable segments for being women and Indigenous, and largely marginalized in the spheres of civil, political, economic, social and cultural life. As has often been observed, the vast majority of Indigenous women face multiple discriminations because of their sex, race/ethnicity, language, culture, religion and class. Hence, in Bangladesh also, they face multiple forms of violence and discrimination to the full and do not gain the security or enjoyment of their human rights.²¹

19 The Economy of the Indigenous Peoples of CHT: Some Myths and Realities, Pradanendu Bikash Chakma, This paper has been read out by the author at the Conference on Development in the Chittagong Hill Tracts held on 18-19 December 1998 at Tribal Cultural Institute Auditorium, Rangamati, Chittagong Hill Tracts.

20 Socio-Economic Baseline Survey of Chittagong Hill Tracts, Chittagong Hill Tracts Development Facility (CHTDF), UNDP, 8 April 2009.

21 Human Rights Situation of Indigenous Peoples in Bangladesh 2013 by Kapaeng Foundation, 2014. P 151.

6. Conclusion

Indigenous peoples in Bangladesh believe that constitutional recognition of them as “Adivasi” would be one of the most crucial steps to safeguard and protect their human rights, individual and collective rights as Indigenous peoples. That would also be helpful developing national policies in sectors such as healthcare, education, employment, as well as other fundamental rights for Indigenous peoples.

In order to resolve the land problem, the government needs to take special measures to recognize traditional land management systems of Indigenous peoples that would respect the practices of collective rights of the community. This arrangement would help to reduce the gross human rights violations as most of this happens due to land grabbing and eviction.

Above all, there should be respect for the rights to self-determination, political participation, free prior informed consent, and freedom from political intimidation and human rights abuses. The right to self-determination contains the provision to the International Covenants of Civil and Political Rights, and the Economic, Social and Cultural Rights in which Bangladesh government is party. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), on which Bangladesh refrained from voting, provides safeguard for Indigenous peoples. The UNDRIP does not actually establish any new rights and freedoms that do not already exist in other UN human rights instruments, but it does spell out how these rights must relate to the specific conditions of Indigenous peoples. Thus the UNDRIP should be endorsed and respected by the government of Bangladesh in order to ensure equality, non-discrimination and social justice for the Indigenous peoples of the country.

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Bridging The Gap: Implementing the Rights of Inc

আদিবাসী অধিকার প্রতিষ্ঠায় মুক্তিকামী জন

আন্তর্জাতিক আদিবাসী দিবস- ২০১৪
কল্লীয়া শহীদ মিন

CHAPTER-II

Indigenous Peoples under the Legal and Policy Frameworks of Bangladesh

Prashanta Tripura*

1. Introduction

As a member state of the United Nations, Bangladesh has signed up to the international human rights framework. It also has a constitution that is in line with the main principles and values that underlie modern notions of human rights and democracy. Thus, generally speaking, the indigenous peoples of the country have the same basic rights as the rest of the population. Moreover, some specific developments such as the Chittagong Hill Tracts (CHT) Accord of 1997 or the introduction of a new clause (Article 23A) in the constitution of the country have created new spaces of engagement relating to the promotion and protection of the rights of 'tribal' people, a term by which the Indigenous peoples of Bangladesh have been known more commonly in official circles.

However, insofar as the concept of indigenous peoples and the international legal instruments relating to groups so named are concerned, much remains to be desired in Bangladesh (Tripura 1993, 2013; cf. Erni 2008). In this context, instead of joining international efforts to promote and protect the rights of the indigenous peoples, representatives of the government have made periodic statements – since at least 1993 – that the 'tribal' people of the country are not really indigenous peoples, or that the term does not apply in this country. Such state of affairs is an indication that the status of the Indigenous peoples of Bangladesh remains to be established firmly and unequivocally in terms of national legal and policy frameworks and relevant international instruments. This chapter presents an overview of the broader context in this regard, and highlights the major trends, issues and concerns in terms of specific measures – particularly in terms of policies in relevant sectors – relating to the Indigenous peoples of the country.¹

1 Much of the information and analysis presented in this chapter is based on the Research on National Policies Relating to indigenous peoples of Bangladesh, conducted by the author, as commissioned by Maleya Foundation and Centre for Integrated Programme and Development (Tripura 2014).

2. An Overview of the Broader Context

As in many other parts of the world, in Bangladesh also the Indigenous peoples have experienced widespread marginalization, exclusion and discrimination in relation to the state and larger society. In fact, as indicated already, downright denial of the existence of Indigenous peoples, i.e. the government's refusal to accord recognition as Indigenous peoples to groups it prefers to call 'tribal' or 'ethnic/racial minorities', has been a hallmark of the official discourse on the subject for at least two decades. This situation reinforces, and is in turn reinforced by, negative and stereotyped views about the indigenous peoples that exist among dominant social groups within the country. Such factors, coupled with inappropriate policy provisions or inadequate implementation of existing policy provisions are helping to perpetuate the systems of exclusion, marginalization and discrimination that the indigenous peoples of the country are faced with.

2.1 Historical Background

Historically, most of the state policies and special legal provisions relating to the Indigenous peoples of Bangladesh can be traced back to the period of British colonial rule, when the indigenous peoples came to be known as 'tribal' people, a label that is still used in government circles despite being regarded as problematic by academics and activists alike. The British colonial rulers generally viewed the 'tribal' people as being simple, somewhat like children, hence needing 'protective isolation' (cf. Tripura 1992). The laws and rules governing the administration of the territories inhabited by the indigenous peoples were therefore usually based on paternalistic and isolationist policies, which found concrete expressions in measures like making places such as the CHT and parts of areas such as greater (old) Mymensingh into 'excluded' and 'partially excluded' areas respectively (Roy et al. 2010: 40)² When the British left, the rulers who took over the affairs of the state inherited the same basic colonial mindset, although the imperative to build new nations/states made the paternalistic policy of 'isolation' give way to that of 'assimilation', which became the new norm in state policies in conjunction with discourses of 'nation building' and 'modernization' that pervaded the post-colonial world order.

Ironically, even though the emergence of Bangladesh was a rejection of the homogenizing tendency of the Pakistani state that sought to suppress Bengali language and identity, the same resurfaced within the nation-state of Bangladesh in the treatment of its Indigenous peoples. In fact, the Constitution of 1972 – which defined the country as a nation of Bengalis – did not recognize

2 Following special provisions made under the Government of India Act 1935 (Part III, Chapter V), the Government of India (Excluded and Partially Excluded Areas) Order 1936 enumerated the 'excluded and partially excluded areas'.

the distinct identities of the non-Bengali ethnic groups commonly known as ‘tribal’ people, for whom the main constitutional safeguard would be an indirect and condescending provision relating to the ‘backward segments of society’ in general. However, in the same year when the new constitution was adopted (i.e. in 1972), the new government did ratify the ILO Convention No. 107, indicating in theory that it did acknowledge the existence of ‘tribal’ people and their rights under international law. In practice, however, the needs and aspirations of the indigenous peoples hardly received due attention.

2.2 International Human Rights Instruments Ratified by Bangladesh

Apart from the ILO Convention No. 107 on Indigenous and Tribal Populations (1957), Bangladesh has ratified all the major international human rights treaties and conventions which relate to indigenous peoples in a general way, or in some cases has specific clauses relating to them. Such instruments include the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- International Convention on the Rights of the Child (1989)
- Convention on Biological Diversity (1992)

Although Bangladesh has not yet ratified the ILO Convention No. 169, or did not vote for the UN Declaration on the Rights of the Indigenous Peoples, the international instruments that it has already signed up to do constitute a reasonable basis on which the indigenous peoples of the country can seek protection and promotion of their rights (cf. Roy 2009 and Roy et al. 2010).

2.3 Current Constitutional Provision Relating to the Indigenous Peoples

The so-called ‘tribal’ peoples of Bangladesh have demanded for over two decades that they be recognized constitutionally as Adivasi or ‘Indigenous peoples’, as the term came to be used internationally. In this context, spokespersons of the government may present a clause – Article 23A – of the amended constitution (as per the 15th amendment or Act 14 of 2011) as an answer to the demand. The clause under consideration, titled ‘The Culture of

tribes, minor races, ethnic sects and communities' states: 'The State shall take steps to protect and develop the unique local culture [sic] and tradition [sic] of tribes, minor races, ethnic sects and communities' (official translation accompanying the Bangla version as published in the government gazette notification of July 3, 2011). If we ignore the terminological problems³ or narrowness of scope associated with this formulation, one could actually see it as a notable improvement compared to the only provision that previous versions of the constitution had in store for the indigenous peoples, namely, an indirect cover under the label 'backward.' Seen in this light, although the term 'Indigenous people' is not used in Article 23A, it does represent an explicit constitutional recognition, for the first time, of social groups and categories that we are referring to as indigenous peoples. However, from the point of view of many IP rights activists, this accommodation, minus the term 'Indigenous', is hardly what they had hoped for. More critically, for them, any sense of achievement is negated by problematic formulations elsewhere in the constitution, e.g. in Article 6, Clause 2, which reads as follows: "The people of Bangladesh shall be known as Bengalee [sic] as a nation and the citizens of Bangladesh will be known as Bangladeshis". To the indigenous peoples of Bangladesh, such confusing formulations constitute nothing less than outright denial of their existence in terms of the history, ethnic diversity and geography of the country.

Apart from being overshadowed by Article 6, the true scope or intent of Article 23A of the amended constitution is limited anyway in that it only talks about the preservation and promotion of 'local culture and tradition' without any mention of linguistic or land rights of the indigenous peoples. In fact, rather than foreshadowing any new laws, Article 23A was in effect little more than a gist of a pre-existent law – the 'Small Ethnic Groups Cultural Institutes Act' of 2010 – which had been enacted to rename various cultural institutes and academies that earlier had 'tribal' as part of their names, by replacing 'tribal' by a neologism (*khudro nrigoshthi*) that could be roughly translated as 'small ethnic group'. In this regard, instead of bringing about any fundamental shift of perspective, the 15th amendment of the constitution merely made explicit the terms that those in power preferred to use – namely 'tribe', along with 'ethnic communities and sects' and 'minor races' – in place of Adivasi or 'Indigenous People', which was what the indigenous peoples of the country had hoped for.

3 The terminological problems look worse in English than in Bangla, due to poor translation. The term translated as 'minor races' (*khudro jatisotta*) would have been better translated as 'small [or minor] nationalities'. Similarly, another word, 'nri-goshthi' would have been better translated as 'ethnic groups' rather than 'ethnic sects'.

2.4 National Laws Relating to the Indigenous Peoples of Bangladesh

At present, the CHT is the only area for which there are a number of laws that have been formulated or updated – following the CHT Accord of 1997 – by taking into account, albeit partially, the demands of the indigenous peoples. Some of the most important laws relating to the CHT include the CHT Regulation 1900,⁴ the CHT Development Board Ordinance 1976 (replaced by an act of the parliament in 2014), Hill District Council Acts 1989 (three separate acts for the hill districts of Bandarban, Khagrachari and Rangamati), the CHT Regional Council Act 1998 and the CHT Land Dispute Resolution Commission Act 2001 (which has undergone a long and contentious amendment process that is yet to be concluded). Most of these laws, however, remain poorly implemented for various reasons that include political as well as bureaucratic complications.

Compared to the CHT, however, the situation of the indigenous peoples living elsewhere in Bangladesh is far worse as there are no special legal provisions tailored to them. Partial exceptions to this rule include provisions under some laws and rules, e.g. the East Bengal State Acquisition and Tenancy Act of 1950, and the Small Ethnic Groups Cultural Institutes Act, 2010 (See Roy et al. 2010 for further details). There are also a few other laws which do not specifically mention the plains Indigenous people, but are of direct relevance to their land and resource rights. One such law is the Forest Act of 1927 (Act XVI of 1927), which regulates the manner of the administration of forest areas and forest produce. Various provisions of this Act, particularly section 28, concern customary land rights of Indigenous people (Roy 2009). Another law that affects the land rights of Indigenous peoples is a delegated law, namely, the *Social Forestry Rules* of 2004, passed in accordance with the aforesaid Forest Act of 1927 [sections 28A(4) and 28A(5)]. It may also be noted that in the plains, influential and unscrupulous land-grabbers has long taken advantage of a law called the Vested and Non-resident Property (Administration) Act, 1974 (Act XLVI of 1974), generally known as the *Vested Property Act*, at the expense of different minority groups, including Indigenous peoples in the northwestern Rajshahi division, and against Mandi (Garo) people in north-central Bangladesh, among others. In 2011 the Parliament passed a landmark bill named the Vested

4 The CHT Regulation of 1900 (Act I of 1900) laid down a detailed policy for the general, judicial, land, and revenue administration of the region and defined the powers, functions and responsibilities of various officials and institutions. It was amended in 2003 to deal with the transfer of jurisdiction over the administration of civil and criminal justice – formerly vested upon civil servants at the district and divisional levels – to judicial officers under the Ministry of Law, Justice and Parliamentary Affairs. (Please see Roy 2009 for details).

Property (Return) Act 2011 that would enable the return of land property seized from the country's Hindu minority and Indigenous peoples over the last four decades. Finally, it may be noted that the Drugs and Alcoholic Substances Control Act, 1990 (Act XX of 1990) exempts “tribals” – both in the plains and in the CHT – from criminal prosecution for consuming traditionally brewed or distilled alcoholic beverages. Although seemingly a mundane matter, this may be seen as an important recognition of the cultural rights of the Indigenous peoples, whose religious and cultural practices and social customs often included, and still include, the use of traditionally brewed liquor (Roy 2009).

3. National Policies in Different Sectors Relating to the Indigenous Peoples

In Bangladesh, presently there is no broad, high level guideline or framework directing the formulation of policies in different sectors relating to the indigenous peoples. Ideally, the constitution of the country itself should have provided a high level policy directive, but unfortunately, that is not the case at present, as noted already. Thus, in the absence of any overarching guidelines, national policies of Bangladesh in different sectors are rarely tailored to the needs or contexts of the indigenous peoples of the country. In cases where the concerns of the indigenous peoples do receive explicit attention, the matter is either dealt with superficially, or in a way that involves lack of conceptual clarity, regardless of the terminology involved. Here it may be mentioned that policies or legal provisions formulated since the 15th amendment have mainly taken the terminology introduced by Article 23A, but little more than that. In some cases, this has simply meant mechanical replacement of the term Adivasi or ‘Indigenous people’ with terms like ‘ethnic minority’ in the context of instances in which the former terms are found in policy documents adopted before the 15th amendment.

Apart from lack of conceptual clarity or comprehensiveness, existing legal and policy provisions that do specifically relate to the indigenous peoples (i.e. ‘tribal’ or ethnic minorities) are rarely implemented properly. In this regard, we may take special note of the CHT Accord of 1997 – which may be seen as a policy framework for indigenous peoples as far as the CHT region is concerned – and the laws associated with it (including the Land Dispute Resolution Act that remains to be amended and implemented properly). The fact that the CHT Accord is yet to be implemented fully and effectively – ushering in a sustained momentum for peace and development – serves as an example of the general state of poor implementation of the existing legal and policy provisions relating to the indigenous peoples of Bangladesh. In what follows, by way of a brief summary of relevant policy provisions (or lack thereof) in selected sectors, we examine some of the general trends and issues relating to the indigenous peoples of the country.

3.1 The Sixth Five Year Plan (SFYP)

Before focusing on specific sectors, we take into account the Sixth Five Year Plan (SFYP), 2011-15, which has replaced the Poverty Reduction Strategy Paper (PRSP) as the main planning tool of the government. In the SFYP, there is a whole section devoted to 'Ethnic Communities' that contains important commitments and perspectives relating to the indigenous peoples.⁵ These include a vision statement that reads as follows:

For the ethnic people, the vision is to ensure their social, political and economic rights; ensure security and fundamental human rights; and preserve their social and cultural identity. They will be ensured access to education, health care, food and nutrition, employment and protection of rights to land and other resources. [p.158]

Following the above vision statement, under the heading 'Areas of Future Action', various challenges with respect to addressing social and economic conditions of 'ethnic communities' are noted, including the observation that there is 'lack of specific objectives concerning needs and concerns of ethnic people in mainstream policies of respective ministries/divisions'. Afterwards, among the major areas of interventions listed, it is stated that 'The Government would consider implementing the UN Declaration on the Rights of Indigenous Peoples 2007 and ratify the ILO Convention [169].⁶ As we approach the end of the SFYP, however, such statements look little more than empty promises.

If we turn our attention to specific policies relating to sectors that are of special relevance to the indigenous peoples, we see a mixed picture marked by considerable gaps, both conceptually and in terms of actual provisions.

3.2 National Policies Formulated in Recent Years (2010 onwards)

We may start our review with the National Education Policy 2010, which was widely hailed by IP rights activists as a positive example. In this policy, the need to pay special attention for the education of Indigenous children at different levels is noted. However, one critical issue – concerning the role of 'mother tongue' at the primary level – is presented in a way that reflects lack of conceptual clarity or political will, or both. In more than one place, it is stated that measures will be taken to help IP children learn respective mother tongues, as opposed to learning *in* their mother tongues, a distinction that has

⁵ The section on ethnic minorities in the SFYP is almost identical with text in the corresponding section found in the revised version of the PRSP, named National Strategy for Accelerated Poverty Reduction II (NSAPR II) for 2009-2011, that was revised and finalized in 2009 by the present government. The minor variations include replacement of the term 'Indigenous' rather mechanically by 'ethnic'.

⁶ In the published versions of both NSAPR II and SFYP, due to what appears to have been a typo, reference is made to ILO Convention 1969 (sic), which has been interpreted as 169.

profound implications. It is no wonder – and perhaps a blessing in disguise – that to date government attempts to implement such confused and confusing policy intentions have not reached the classroom yet.

Despite the limitation noted, the fact that the Education Policy does pay explicit attention to the indigenous peoples – and does this by using the term Adivasi (equivalent to IP) – may be seen as quite progressive. While other policies formulated later – e.g. National Health Policy 2011, National Women Development Policy 2011, National Children Policy 2011, and National Labor Policy 2012 – are not necessarily as proactive or forthcoming as the one in the education sector, they do generally acknowledge the need to pay special attention to the indigenous peoples. However, in terms of terminology, except in one fleeting instance in case of the health policy (in which the word ‘Adivasi’ is used once), they all follow the official prescription formalized through Article 23A of the constitution. In terms of substance, most of these policies are found wanting in terms of clear and concrete provisions that address the needs and rights of the indigenous peoples, or the diverse circumstances in which they live.

3.3 National Policies Formulated in Different Sectors During the Period 1992-2009

National policies formulated in different sectors prior to 2010 are generally found to have little explicit attention to indigenous peoples. In this regard, however, the National Culture Policy 2006 is an exception. In fact, in terms of sheer volume of text devoted to the indigenous peoples (the terms actually used being equivalent to ‘tribal’ and ‘ethnic group’), this document far surpasses all other existing policies. However, while the need to promote and protect the cultures of indigenous peoples (‘tribal’ people) are acknowledged, there is more prominence given on Bengali language and culture as constituting the ‘mainstream’, and there is also explicit reference to the need to make the indigenous peoples more familiar with and ‘involved’ (or ‘immersed’) in the mainstream. There is also special mention of ‘tribal cultures’ as a potential tourist attraction to be promoted by the government. In many ways, the vision of cultural diversity, with special reference to the indigenous peoples, as presented in this policy is the same as that underlying the Small Ethnic Groups Cultural Institute Act of 2010, or what eventually found expression in Article 23A of the amended constitution.

Other policies dating from the 1990s and 2000s are generally found wanting either in terms of having any significant provisions that are specific and favourable to the indigenous peoples. These include, in chronological order, National Environment Policy 1992, National Tourism Policy 1992, National Livestock Policy 1992, National Forest Policy 1994, National Fisheries Policy 1998, National Water Policy 1999, National Agriculture Policy 1999,

National Rural Development Policy 2001, National Land Use Policy 2001, National Social Welfare Policy 2005, National Food Policy 2006, and National Renewable Energy Policy 2009. In many of these policies, there is hardly any special mention of the indigenous peoples or of diverse local cultures and geographical contexts that they represent. If and when the indigenous peoples do receive some attention (usually under the label 'tribal'), it is rather superficial and fleeting, and does not call for any sensitivity to and respect for Indigenous knowledge and cultural traditions. For example, in the National Tourism Policy, there is reference to 'tribal' cultures as a tourist attraction, but no directive as to how tourism may be promoted in 'tribal' areas by ensuring their informed and active participation on the one hand, and without harming their lands and cultures on the other hand.

Similarly, in the National Environment Policy of 1992, there is no mention of the relationship between culture and the environment, nor is there any special attention given to groups of people that are heavily dependent on the environment for their livelihood, such as Indigenous people and the rural poor. In several cases, e.g. in policies relating to fisheries, livestock, food and agriculture, the emphasis is on market driven and technology dependent development rather than people-centred approaches. There is no mention of Indigenous knowledge and practices related to agriculture. In some cases, rather than being indifferent to the indigenous peoples, policy provisions may even be described (and in any case are generally perceived by indigenous peoples) as hostile to them. For example, the National Forest Policy 1994 emphasizes economic and commercial gain and profit from use of forest resources, and conservation without taking the people living near or in forest areas into account. Although areas selected for reserved forests and afforestation are mostly inhabited by indigenous peoples, whose lives have been dependent on forests, there is no recognition of their rights. Rather, they are marked as harmful to the forest, or as encroachers, as exemplified by the following statement found in the policy document: 'A large number of tribal people live around a few forest zones. Since the ownership of land under their disposal is not determined, they grab the forest land at will.'

4. Conclusion

Our review above indicates that existing national policies in Bangladesh are generally characterized by little to no specific reference about indigenous peoples, or even if they are mentioned, the actual provisions are not necessarily well thought out or are part of a comprehensive and coherent framework that is based on good analysis and broad visioning. In fact, at present there is no single comprehensive policy framework relating to the Indigenous peoples of the country, where even some basic questions like whether there are indigenous peoples in the country remain unresolved. This situation clearly calls for an

overarching policy framework, or some kind of broad guidelines, relating to the indigenous peoples. This should ideally come from the government itself, but demands for such a framework need to be articulated more clearly and voiced in a more united, inclusive and participatory manner by advocates of IP rights. Unfortunately, there are no concerted efforts at present among concerned actors to address this issue. In fact, institutionally, the affairs of the indigenous peoples are not currently dealt with by any single overarching institution or agency, and there is no effective coordination or collaboration among various institutions that share the responsibility of looking after the interests of the indigenous peoples.

Clearly, there are many challenges ahead in moving out of the current predicament in terms of the policy and institutional framework relating to the indigenous peoples of Bangladesh. Perhaps the biggest challenge of all is an unfortunate trend whereby IP rights have come to be seen as a zero-sum game, meaning that the potential gains of the indigenous peoples are widely perceived as a threat to the majority of the Bengalis, who constitute 98% of the population of the country. Unless we can change this misperception, it would be really difficult to come up with or advance any politically viable robust IP policy agenda in Bangladesh. In this regard, a shift in perspective, as advocated by this author in the following terms in a recent paper (Tripura 2013; cf. Tripura 2012), may be necessary to change the whole discourse:

We should [...] seek to be guided by a bold new vision that would outline not what the country or the world can give to the indigenous peoples, but what the indigenous peoples can hold up to the nations of the world. This would be a vision based on some old ideals that are quite simple, but have powerful resonances in the cultures and traditions of the indigenous peoples: equality, reciprocity, and harmony with nature’.

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Photo : Hiran Mitra Chakma

CHAPTER-III

Situation of Civil and Political Rights of Indigenous Peoples in Bangladesh

Mangal Kumar Chakma*

1. Introduction

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) affirm civil and political rights of all peoples to participate in political, social and economic spaces. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has several principles for civil and political rights of Indigenous peoples. These include the rights of Indigenous peoples to self-determination, participation, free, prior and informed consent and the duty of state to consult and cooperate with Indigenous peoples.

Generally the participation of Indigenous peoples in politics is still not very remarkable. Though Indigenous peoples in Bangladesh have been participating in all the democratic movements of the country including the 1971 liberation movement of Bangladesh, however, their power-sharing of and political participation to the State has never been recognised. The Constitution of Bangladesh did not acknowledge the political arrangement for Indigenous peoples. Following the signing of the CHT Accord in 1997, a special administrative arrangement with formation of the CHT Regional Council and three Hill District Councils was introduced in CHT. However, special political arrangement for Indigenous peoples in plain lands still remains unaddressed. In addition, there are no reserved seats for Indigenous peoples including women to the Parliament and local government bodies, which contributes to political deprivation of Indigenous peoples in Bangladesh.

2. Right to Self-determination

Autonomy and self-government may be the principal means through which the right of self-determination is exercised by Indigenous peoples. The right of self-determination includes political, economic, social and cultural aspects. However, due to the interdependent nature of these aspects it is not possible to draw a clear distinction among them.

Self-determination as it relates to autonomy is not necessarily the right to secede from the State. It means the right to freely determine their political status and

freely pursue their economic, social and cultural development inside the country in which Indigenous peoples live. Indigenous peoples want to govern themselves in matters relating to their internal and local affairs, and to retain their distinct political, legal, economic, social, and cultural institutions.

The ICCPR and ICESCR affirm rights to self-determination of all peoples. The UNDRIP also ensures rights to self-determination of Indigenous peoples. Article 3 of the UNDRIP says,

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The UNDRIP also affirms that Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights laws.

During the framing of the first Constitution of Bangladesh in 1972, Manabendra Narayan Larma, pioneer of the national awakening of *Jumma* people and then a member of the Constituent Assembly, demanded regional autonomy for the Chittagong Hill Tracts (CHT). The government of Bangladesh rejected it, and accordingly the Constitution did not recognise the presence of Indigenous peoples in the country. Thus, the self-government system of Indigenous peoples of the country remained unrecognised and no seats for Indigenous peoples to the parliament and local government bodies were reserved for them.¹

During the 15th Amendment to the Constitution in 2011, Indigenous Peoples Organisations (IPOs), Civil Society Organisations (CSOs) and secular and progressive political parties demanded for constitutional recognition of national entities, languages and cultures of Indigenous peoples across the country; special governance arrangement of CHT region for the protection of political, economic, cultural and religious rights in the CHT; seat reservation for Indigenous peoples including women in the Parliament and local government councils; constitutional provision with a guarantee that no amendment to constitutional provisions and laws relating to Indigenous peoples would be made without the prior consent of Indigenous peoples; the rights to have control over land, territory and natural resources of Indigenous peoples; and constitutional guarantee of CHT Accord signed in 1997 and laws formulated under the Accord.² However, the government rejected the demands.

1 Manabendra Narayan Larma: Jibon O Sangram, M N Larma Memorial Foundation, 2009.

2 Human Rights Report on Indigenous Peoples in Bangladesh 2011, Kapaeeng Foundation, Dhaka.

2.1 Chittagong Hill Tracts Region

During and before the Mughal period in the Indian subcontinent, the *Jumma* people of the CHT region were sovereign. Even during the British colonial period (1860-1947), the CHT was regarded as a 'Backward Tract' and later 'Totally Excluded Area' in order to protect Indigenous *Jumma* peoples from economic exploitation by the non-Indigenous and to preserve the Indigenous peoples' socio-cultural and political institutions based on customary laws, community ownership of land and so on. In fact, several provisions of the CHT Regulation of 1900 functioned as a safeguard for the *Jumma* peoples and it prohibited immigration into the region and land ownership by non-Indigenous people.³ It was necessary for the protection of the distinctive yet vulnerable characteristics of the region and its people.

Though 'Totally Excluded Area' status was retained in the first Constitution of Pakistan [1956], the government of Pakistan amended laws that restricted the entry of non-Indigenous people into the region and prevented acquisition of land titles. However, since the 60s during the Pakistani period and even after Bangladesh became independent in 1971, the entire CHT region was thrown open for unrestricted migration and acquisition of land titles by non-Indigenous people, in violation of the letter and spirit of the 1900 Regulation.

With a view to control the movement of the right to self-determination of *Jumma* peoples, the government initiated suppressive measures including militarisation and population transfer of Bengali population to the CHT. Finding no other alternative to ensuring their very survival, the *Jumma* peoples rallied behind the banner of the Parbatya Chattagram Jana Samhati Samiti (PCJSS), the sole political organization of CHT Indigenous peoples led by Mr. Larma. The peaceful democratic movement turned into an armed struggle in 1975 when all democratic avenues failed to draw attention of the government and the ruling elites.

After decades-long struggle by Indigenous *Jumma* peoples, the *CHT Peace Accord* signed between the government of Bangladesh and Indigenous *Jumma* peoples in 1997, which introduces a special political arrangement for CHT. The special arrangements include the formation of CHT Regional Council (CHTRC), as an apex political body of the region and three Hill District Councils (HDCs). The newly introduced CHT Regional Council and the somewhat older Hill District Councils are also unique to the CHT. The majority of the seats (two-third) in the CHTRC and HDCs, including the positions of chairs, are reserved for Indigenous peoples and one-third seats for permanent Bengali residents. The CHT Accord also calls for the creation of the Ministry of Chittagong Hill Tracts Affairs (MoCHTA) based in Dhaka. The head of the

3 The CHT Issues and Its Solution, Jyotirindra Bodhipriya Larma, www.pcjss-cht.org

Ministry will be an Indigenous person. Moreover, an Advisory Committee will be formed to support the Ministry.

At present, the powers and functions of the CHTRC and three HDCs are not functional. The election of the HDCs is yet to be held since the signing of the Accord. For the election of the HDCs, a voter list only with permanent residents of CHT has not been prepared till date. The HDCs are currently running with 5 member including chairman who are nominated by the ruling party. Instead of holding elections for constitution of 34-member full-fledged councils, government recently initiated to amend the HDC Acts aiming at increasing the size of three interim HDCs from 5 to 11 members including the chairman.⁴ After signing the Accord, the few offices/functions of previously transferred departments have been transferred to the HDCs, but the main subjects, for examples, law and order, police (local), land and land management etc. are yet to be transferred.

Further, the CHT Accord authorises CHTRC to coordinate and supervise all development activities in CHT including the three HDCs, the CHT Development Board, local bodies and NGOs. However, the HDCs and the CHTDB have not complied with this. Hence, substantial progress with regard to self-determination is yet to be achieved due to the non-implementation of the core provisions of the Accord.

Notably, intervention in politics and civil administration by the military forces has a negative impact in realizing rights of self-determination of Indigenous peoples in CHT. The areas of intervention are diverse, including top-level policy decisions about the CHT, constitutional amendment, amendment of the CHT Land Dispute Resolution Commission Act, use of 'Adivasi' (Indigenous) terminology etc.

In the current political, social and economic settings of Bangladesh, the army is one of the most powerful institutions, often beyond public criticism or scrutiny, even by the Supreme Court of Bangladesh. Needless to say, with its pervasive power and influence over Bangladeshi society in general and the CHT in particular, the army continues to oppose any substantive progress on the implementation of the CHT Accord.⁵

Besides, the CHT has a traditional structure based on the customs of the local Indigenous groups with Circle Chiefs or *Rajas* at circle levels, and Headmen at *mouza* and *Karbaries* at village levels. These traditional institutions have been

4 Statement of PCJSS in Context of Present State of Implementation of CHT Accord, Amendment of the three HDC Acts, enactment of the CHT Development Board Act and Establishment of the Science and Technology University and Medical College in Rangamati, PCJSS, 14 July 2014.

5 Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 submitted by the Special Rapporteur, Lars-Anders Baer, at Tenth session of the UNPFII, May 2010 (E/C.19/2011/6).

integrated into the democratic institutions like the MoCHTA, CHTRC, HDCs, CHTDB, and CHT Land Dispute Settlement Commission etc. This involvement has opened up a scope to get the traditional system involved in development sector. But it is still on paper. The execution of it is still far away from reality. Even Circle Chiefs are not invited in the HDC meetings. Most crucial issue for traditional institutions was absence of awareness about or recognition of the administrative roles of the traditional institutions and leaderships among the government officials and policy makers.

The CHT Accord authorizes, for example, the Circle Chiefs to determine- on the basis of the certificate by the concerned *mouza* Headman, or UP Chairman or Municipality Chairman as the case may be for filing nomination paper for contesting an election- whether a person is a non-tribal or not and if he is a non-tribal, then to which community he does belong. This is also applicable in determining the permanent residence status of the non-tribals. On 21 December 2000, MoCHTA issued an instruction authorizing the Deputy Commissioners of the three hill districts to issue “Permanent Resident Certificate”. It was a completely illegal instruction, since such an executive order cannot override an expressed provision of law passed on the floor of the Parliament. Bengali settlers with the certificates issued by the DCs are getting employment and other facilities. It is also a naked and gross violation of the inherent spirit of the CHT Accord recognising the CHT region as a tribal inhabited area.

2.2 The Plains

For plain land Indigenous peoples in the country, there is no special political arrangement available. The self-government systems of the Indigenous peoples of the plains districts remain totally unrecognized. There was only one example for such political arrangement in plain lands that was partial excluded status of five thanas in greater Mymensingh district. The British government declared five thanas such as Sribardi, Nalitabari, Haluaghat, Durgapur and Kolmakanada of greater Mymensingh district as *Partially Excluded Areas*⁶ in 1935. These areas bordering the Garo hills were predominantly Indigenous majority areas. By declaring these areas as *Partially Excluded Areas*, some safeguards were given to Indigenous peoples. This partially excluded area status of said five thanas of Mymensingh district was not included in the tribal areas list in the 1962 Constitution of Pakistan, unlike the CHT. The changed constitutional status of Mymensingh resulted, among others, in a huge influx of settlers into the region, starting from the 1950s and continuing into the 1980s.

6 A ‘partially excluded area’ denoted a comparatively mixed, but still predominantly tribal-dominated territory, whose administrative system was more integrated into the regular administration of the province (than was the case with excluded areas), and a higher number of laws of general application were allowed to function therein.

In the plains, there is a law namely the East Bengal State Acquisition and Tenancy Act, 1950, Section 97 of which forbids the transfer of lands owned by aboriginals to non-aboriginal persons without the express consent of the government's district revenue officer. This law is specially protected in the Constitution [Article 47(2) and First Schedule], on account of administrative implications of legal challenges regarding complex land issues, rather than on account of political arrangement for plain Indigenous peoples. This ensures a limited extent of self-determination over the land and territories of Indigenous peoples of the plains.

However, some provisions of the Constitution provide the scope for affirmative action for Indigenous peoples in the name of the 'backward section of citizens'. Article 28(4) of the Constitution states, for example, "nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens. Article 29(3) also stipulates that "Nothing in this article shall prevent the State from (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic."

Under this provision, as an affirmative action, the government set up the Special Affairs Division (SAD) under the Prime Minister's Office to look after the welfare of Indigenous peoples in the plains. However, there is no decision-making role of Indigenous peoples in the SAD and the demand for forming an advisory committee comprising representatives of Indigenous peoples is being ignored by the government.

Traditional institutions of Indigenous peoples in plain land also remain totally unrecognized. Traditional leaders in plains lack capacity in terms of education and adequate knowledge in legal and about their respective duties and responsibilities.

Unlike CHT, inhabitations of Indigenous peoples in plain land are not concentrated in the specific regions or areas. Hence, scope for application of territorial autonomy for them is very limited, if not fully inapplicable. Rather, cultural autonomy for them like Indigenous Sami people in Finland⁷ is more appropriate in order to negotiate in all far-reaching and important measures which may directly affect the Indigenous peoples in the plain land. The government of Bangladesh enacted an act named Small Ethnic Group Cultural Institute Act 2010 aiming at merely to collect and preserve historical, social and cultural heritages, such as, languages, literatures, songs, arts, religions, ceremonies, customs, practices, beliefs and to conduct research only. In addition, through 15th Amendment of the Constitution, a new provision (Article

⁷ Implementation of the Right of Self-Determination of Indigenous Peoples within the Framework of Human Security, John B. Henriksen, 1999

23A) was inserted in the Constitution which says, “The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities.”

Indigenous peoples’ rights to language and culture are related to rights to self-determination and their lands, territories and resources. The maintenance and development of Indigenous peoples’ cultures requires the protection of their lands, territories and resources. Neither the new Article 23A of the Constitution nor has the *Small Ethnic Group Cultural Institute Act 2010* addressed the rights of Indigenous peoples to lands, territories and resources.

Even, the government does not pay due attention to the demand of the plain Indigenous peoples including women for introducing reserved seats in the local government bodies, such as, Union Council, Upazila Council, Municipality and District Council and also in the Parliament.

The Parliamentary Caucus on Indigenous Peoples, a pressure group of the sitting Member of Parliament, drafted an act named “Bangladesh Indigenous Peoples’ Rights Act” in 2013 incorporating rights to ancestral domain, self-governance, cultural integrity, social justice and human rights, and proposing to set up a “National Commission on Indigenous Peoples” complying with the provision of international human rights laws.⁸ President of Workers Party of Bangladesh and also Convener of Parliamentary Caucus Rashed Khan Menon MP was likely to place the bill. However, before he could submit the bill to Parliament Secretariat for initiation in the house, the foreign ministry reportedly requested Speaker Shirin Sharmin Chaudhury not to allow any such legal proposal in the House. On 18 September 2013 the foreign ministry requested the members of the Parliamentary Standing Committee on the Ministry to Request the speaker to block Menon’s bill, saying it was “not consistent” with the country’s Constitution and such demands may put Bangladesh’s sovereignty to question.⁹

3. Rights to Political Participation and Decision-making

Article 18 of the UNDRIP stipulates, “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.” Article 27 of the Constitution of Bangladesh states that “all citizens are equal before law and are entitled to equal protection of law” and Article 28(4) states that “nothing in this article shall prevent the

8 Joint Submission on the Human Rights Situation of Indigenous Peoples in Bangladesh to the UN Human Rights Council for the Universal Periodic Review on 22 April 2013 - 3 May 2013 by the Coalition of Indigenous Peoples Organisations, Dhaka.

9 The Dhaka Tribune, 23 September 2013, Government pre-empted ‘adivasi’ bill

State from making special provision in favour of women or children or for the advancement of any backward section of citizens.” It is understood that the Indigenous peoples form part of the disadvantaged part of the citizens, which the Constitution terms ‘backward section of citizens’.

However, Indigenous peoples do not enjoy equal treatment before law and administration. Indigenous peoples, particularly those from the plain land, have been excluded from full participation in political life. Given that Indigenous representation in legislative bodies and the exercise of legislative power to protect Indigenous peoples have been limited, Indigenous peoples find it more effective to seek action through the executive and judicial branches of the State. However, powerful positions at national, district, upazila and union levels are also generally not held by Indigenous peoples.¹⁰

The government does not pay due attention to the demand of the plains Indigenous peoples for introducing reserved seats in the local government bodies, such as, Union Councils, Upazila Councils and District Councils. During the 15th Amendment to the Constitution in 2011, Indigenous peoples of the country demanded seat reservation for Indigenous peoples including women in the Parliament and local government councils. But the government rejected popular demands of Indigenous peoples. In the 4th Upazila Elections held in February-March 2014, Indigenous candidates in the 25 upazilas of three hill districts in CHT won 18 chairman posts, 17 female vice chairman posts and 17 vice chairman (general/male) posts while in plain land Indigenous candidates captured only 3 female vice chairman posts in 61 districts (total 496 upazilas throughout the country).¹¹ Main causes of poor representation of Indigenous peoples in local government bodies in the plain land are, among others, lack of seat reservation for Indigenous peoples and scatter inhabitation of Indigenous peoples in the plain land, unlike CHT.

The most Indigenous communities in the plains form small pockets or enclaves in an otherwise Bengali-populated area. This means, among others, that these peoples’ electoral strength does not usually allow them to elect an Indigenous representative to local government bodies, let alone to parliament, with some very limited exceptions.¹² This obviously impinges upon their opportunities of ‘participation in elective institutions’ as mentioned in the ILO Convention No. 107. The 2011 census figures for the plains Indigenous peoples are also believed to be ‘obvious’ underestimates, particularly in the northwestern Rajshahi

10 Report of the Special Rapporteur on the rights of Indigenous peoples, James Anaya, Consultation on the situation of Indigenous peoples in Asia, 31 July 2013, A/HRC/24/41/Add.3, para 34

11 Indigenous candidates win 18 chairman posts, 20 female vice chairman and 17 vice chairman posts, Kapaeeng Foundation, www.kapaeeng.org and Kaler Kantho (national Bangla daily), 10 April 2014

12 The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review, Raja Devasish Roy, ILO office, Dhaka, July 2009

division. The aforesaid demographic changes have had far-reaching, and largely negative, consequences on their political, social and economic integrity, and their cultural identity.¹³

During the 2011 elections of Union Council, the lowest administrative unit in Bangladesh, Indigenous candidates won a total of 77 member posts including women reserved seats comprising 60 member posts in North Bengal (Rajshahi, Joypurhat, Chapainawabganj, Dinajpur, Rangpur, Thankurgaon, Naogaon, Sirajganj and Bagura districts); 8 member posts in greater Mymensingh (Mymensingh, Netrakona and Sherpur districts); and 4 member posts in greater Sylhet district; 2 member posts in Gazipur district and 3 member posts in Cox's Bazar district.¹⁴

In the 10th parliamentary elections held on 5 January 2014, all three constituencies of three hill districts in CHT were garnered by Indigenous candidates. One of them was nominated by PCJSS, a political party of Indigenous *Jumma* peoples in CHT while two contested elections with nomination of Awami League, a national political party of the country. As absence of seat reservation for Indigenous peoples in the parliament and local government bodies, getting nomination in the elections depends mainly on the political favour. Moreover, the persons who won elections with the national political party nomination cannot go beyond the respective party's political stance and hence, in most cases, they cannot play effective roles to protect and promote rights of Indigenous peoples. As a result, though Indigenous persons in three constituencies in CHT except Abdul Wadood Bhuiyan won the elections since 1990 after the fall of Ershad regime, but it was widely held that they could not play strong and effective role in defence of the CHT issues. The lone Indigenous Garo MP named Advocate Promod Mankin in plain lands was nominated by Awami League and won the two elections held in 2008 and 2014, despite the Indigenous voters forming only about one-tenth of the electorate. Though very few Indigenous candidates in North Bengal (Rajshahi-Dinajpur region) contested in the parliamentary elections in 2008 and 2014, but failed to win elections due to lack of achieving support from national level political parties and also minority in their localities.

As far as rights to participation and decision-making are concerned, Indigenous peoples in Bangladesh, particularly in the plain land, have had little or no voice in decision-making. As a result of the administrative devolution in the CHT in accordance with the CHT Accord of 1997, Indigenous people are now more in control of deciding their development priorities, but even here, major decision-making powers and financial authority are retained by the ministries based in the national capital.

¹³ Ibid

¹⁴ Manik Soren, Jatiya Adivasi Parishad, Rajshahi, 2011.

The CHT Accord provides for introduction of special governance system in CHT with the CHT Regional Council (CHTRC) and three Hill District Councils (HDCs) in which the chairman and two-thirds of the members are to be reserved for Indigenous peoples. However, substantial progress in regard to political participation of Indigenous *Jumma* peoples is yet to be achieved due to the dilly-dallying tactics resorted to by the government in holding elections of the CHTRC and three HDCs and also devolution of powers and functions to these institutions. Since the signing of the CHT Accord in 1997, no election of the CHTRC and three HDCs has been held. The five-member interim Councils (each HDC) formed with and headed by ruling party members have been functioning year after year in an undemocratic way.¹⁵

The CHT Accord also ensures representation of Indigenous peoples in the Land Commission which will settle the land disputes in accordance with the existing laws, customs and practices in CHT. The Land Commission will be headed by a retired justice while members of the Commission include chairman of the CHTRC; three chairmen of Rangamati, Khagrachari and Bandarban HDCs and three circle chiefs of Chakma, Bohmong and Mong Circles. In addition, the Divisional Commissioner of Chittagong Division is to act as the member-secretary to the Commission. Though CHT Accord confirms participation of Indigenous peoples in the Land Commission, the Commission is yet to start its functions as per the Accord. And hence land disputes are yet to be resolved despite the fact that more than 17 years have passed after signing the Accord.

Clause 19 of the Part D of the CHT Accord provides for setting up of a ministry on Chittagong Hill Tracts appointing a Minister from among the tribals and for forming an Advisory Committee comprising of chairman of CHTRC, three chairmen of three HDCs, three Circle Chiefs of three traditional Circles, three members of parliament elected from three constituencies in CHT and three non-tribal members to be nominated by the Government to lend support to this ministry. However, it is alleged that the CHT Affairs Ministry has been unable to work properly according to its mandates and powers and functions as most of the officers in the ministry are non-Indigenous persons (Bengalis). Most of them are either unaware of or insensitive to CHT and its original inhabitants or racially prejudiced and biased towards Bengali settlers in CHT.¹⁶

Another important institution is the CHT Development Board which was set up during military regime in 1976 with an aim to resolving CHT problem through economic programs. Almost all economic projects are implemented through

15 An Appeal for Proper Implementation of CHT Accord, Parbatya Chattagram Jana Samhati Samiti (PCJSS), Rangamati, April 2014

16 Report on the Implementation of the CHT Accord, Parbatya Chattagram Jana Samhati Samiti (PCJSS), Rangamati, January 2013

this institution. The CHT Accord assigns the CHTRC with the authority to carry out the general and overall supervision of the Board. The Accord also stipulates to give preference to the eligible Indigenous candidates in appointing the chairman of the Board. However, during the post-Accord period, non-tribals were appointed twice (2001-06 and 2007-08) as Chairman of the Board violating the said provision. Tribal candidates were only appointed twice (1996-01 and 2009-13) as per the provision. The Board continues to ignore the CHTRC's supervision which jeopardizes the decision-making rights of Indigenous peoples. The government has passed the CHT Development Board Act 2014 in the parliament on 1 July 2014 during the Budget Session without having consultation with and advice from CHT Regional Council. The enactment of CHT Development Board Act 2014 will undoubtedly bring harm to the special administrative system of CHT that comprises of CHT Regional Council and three Hill Districts Councils and will invite administrative complexity in the administration and the development as well.¹⁷

The CHT Accord calls for the demilitarization of the region through the full activation and devolution of powers to the CHT institutions of the special governance system as well as the removal of all temporary military camps. Ironically, there has been a further strengthening of military control of the region. This includes the retention of "Operation Uttoron", which is an executive order conferring rights on the military to intervene in civil matters beyond their normal jurisdiction. Furthermore, adding to the concern over strengthened military control was an unofficial proposal from the Armed Forces Division of the Prime Minister's office to establish a Strategic Management Forum¹⁸. This forum would have a significant presence of military and intelligence officials and its major responsibilities would be to formulate integrated initiatives, policy-making decisions and an action plan for all issues related to the CHT.¹⁹

4. Right to Free, Prior and Informed Consent

Article 19 of the UNDRIP provides, "States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative

17 Statement of PCJSS in context of the Present State of Implementation of CHT Accord, Amendment to the three Hill District Council Acts, Enactment of the CHT Development Board Act and Establishment of the Science & Technology University and College in Rangamati, 14 July 2014.

18 It has been proposed to include representatives from the Armed Forces Division, National Security Intelligence, the Directorate General of Forces Intelligence and Army Headquarters as well as high-ranking representatives of the 24 Infantry Division, Bangladesh Army, stationed in the greater Chittagong area in the membership of the forum.

19 Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 submitted by the Special Rapporteur, Lars-Anders Baer, at Tenth session of the UNPFII, May 2010 (E/C.19/2011/6).

institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

By virtue of this provision, Indigenous peoples of the country have the right to decision-making process in terms of the right to give their “free, prior, and informed consent” to state policies or practices that affect them, to ensure that those policies are compatible with their cultures and are not imposed upon them.

During the 15th Amendment to the Constitution, Indigenous peoples demanded to ensure constitutional provision with a guarantee that no amendment of constitutional provisions and laws relating to Indigenous peoples will be made without the prior consent of Indigenous peoples. However, government did not take any consideration of this demand. It should be noted that though the ‘Excluded Area’ status was retained in the first Constitution of Pakistan passed in 1956 that restricted the entry of non-Indigenous people into the region and prevented acquisition of land titles. However, during the 60s under Pakistani rule and even after Bangladesh became independent in 1971, the entire CHT region was thrown open for unrestricted migration and acquisition of land titles by non-Indigenous people, in violation of the essence of the 1900 Regulation. This is direct violation of free, prior and informed consent. Even the partially excluded area status of above-mentioned five *thanas* of Mymensingh district were not included in the tribal areas list in the 1962 Constitution of Pakistan and the government of Pakistan did not even feel to consult and seek consent of Indigenous peoples of this region.

The CHT Accord stipulates that in making any law in connection with the CHT, the government shall enact such law in consultation with and as per the advice of the CHTRC. But this legislative prerogative of the CHTRC largely remains untested especially in matters of such laws that are exclusively meant to deal with CHT issues. The CHTRC is not being consulted in making any new law that affects CHT in any measure. Its recommendations are not being taken into account. In addition to these, the government is not taking any effective step to amend any such law detrimental to the development and to the welfare of the Indigenous peoples.

The CHTRC was not consulted in making the Code of Rules of the NGOs, *CHT Land (Dispute Settlement) Commission Act 2001*, other concerned Laws and Acts. In addition, the government introduced the *Speedy Trial Act 2003*, *Women and Children Repression Prevention Act 2003*, *Small Ethnic Group Cultural Institutes Act 2010*, which affect CHT, along with other parts of the country, without consulting the CHTRC.²⁰

20 Report on the Implementation of the CHT Accord, Parbatya Chattagram Jana Samhati Samiti (PCJSS), Rangamati, January 2013.

Though consultation with the Circle Chiefs by Deputy Commissioners (DCs) on the Indigenous issues is mandatory (vide rule 39 of the CHT Regulation 1900), the Chiefs are never consulted ever since the British left the sub-continent in 1947. The DCs, violating the CHT Regulation 1900, had totally stopped meeting the Advisory Council formed by the Circle Chiefs and convening Chiefs' Conference. The traditional leaders are not consulted or informed by the DCs before granting leases and settlements of land and issuing permits. No advice is sought during allotment or acquisition of lands by the government. Setting the consultation with the Circle Chiefs at naught, Rule 34 of CHT Regulation dealing with land rights of the *Jumma* people has been brought under continuous onslaught of the national government.²¹

When the Grand Alliance Government came into power (2009-2013), the CHTRC forwarded recommendations on the Forest Goods Transit Regulation, 1973 and Water Resources Act, 2009 to the government but these were ignored. However some of its proposals to the National Education Policy were accepted. No opinion was also sought from the CHTRC on the formulation of the Wildlife Act 2012 and on the amendment of the Forestry Act. Other laws and policies enacted and framed without consulting the CHTRC and seeking opinion from Indigenous peoples in the plain land were Public Representation Ordinance (2nd Amendment) 2008, Local Government (Upazila) Ordinance 2008, Local Government (Poura Sova) Act 2009, Local Government (Union Parishad) Act 2009, Small Ethnic Groups Cultural Institutes Act 2010, and National Women Development Policy 2011.

The Small Ethnic Groups Cultural Institutes Act was passed without consulting Indigenous peoples on the terminology to be used, recognized only 27 out of more than 48 "small ethnic groups" thus leading to their exclusion in the 2011 population census and development facilities provided by the Special Affairs Division (SAD). In some upazilas of the plain land, upazila administration forms a committee named Small Ethnic Group Development and Coordination Committee headed by Upazila Nirbahi Officer (UNO) to look after the project allocated by the SAD for development of Indigenous peoples in which all the officers of upazila level were included as member. Apart from these members, a hand-picked member from Indigenous communities was co-opted in this committee by Deputy Commissioner of concerned district. Amidst a dozen of members of this committee drawn from the mainstream community, the co-opted member from the Indigenous committee naturally cannot play any decisive role.

21 Capacity Building of Traditional and Elected Leaders, Mangal Kumar Chakma and Mathura Lal Tripura, LOCAL GOVERNANCE CAPACITY DEVELOPMENT (LGCD), Technical Assessment Report, United Nations Development Programme, Chittagong Hill Tracts Development Facility, July 2006, Dhaka.

In application of the East Bengal State Acquisition and Tenancy Act of 1950 in regard to transfer Indigenous peoples' land to non-Indigenous persons, the free, prior and informed consent, however, is unequal across the plains. In Mymensingh, there is an understanding between the district administration and the *Tribal Welfare Association* – a social organization that goes back to the British period – whereby the district authorities do not allow land transfers by Mandi (Garó) and other aboriginal peoples without first consulting the association. In Dinajpur, administration also consults with the Adivasi Samaj Unnayan Samity prior to allowing Indigenous people's land transfer to non-Indigenous persons. But no institutionalized practices of consultation exists in other parts of Rajshahi division. During British times, and perhaps even on to the early period of Pakistani rule, special officers – generally styled as Welfare Officers – used to bear special responsibility to protect the welfare of Indigenous peoples, including in Mymensingh and in the Patuakhali-Barguna region, but there is no such office in the aforesaid places any more. It is reported that in Dinajpur district, the post of Welfare Officer still exists, and yet seems to have little or nothing to do with the welfare of the local Indigenous people.²²

Bangladesh became a Partner Country of UN-REDD in August 2010 in which the government acknowledges to involve and to consult with Indigenous peoples during REDD+ Readiness process. International Mother Language Institute which is run by government of Bangladesh undertook an initiative to conduct linguistic survey of Indigenous peoples. However, Indigenous communities or their organisations were not consulted. This way, the government violates rights of the free, prior and informed consent of Indigenous peoples.

5. Freedom from Political Intimidation and Human Rights Abuses

Article 5 of International Convention on the Elimination of All Forms of Racial Discrimination stipulates: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law." ICERD ensures that all acts of torture are offences under its criminal law and ICCPR prohibits all kinds of torture or cruel, inhuman or degrading treatment or punishment. Indigenous peoples have the right to be protected from genocide, arbitrary execution, torture, forced relocation, or assimilation, and they want to enjoy their rights to freedom of expression, association, and religion.

As a member-State of UN, Bangladesh is a signatory to a number of international human rights covenants and conventions, Bangladesh has the

²² The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review, Raja Devasish Roy, ILO office, Dhaka, July 2009.

obligation to respect, protect and fulfil the rights of Indigenous peoples in Bangladesh. However, different state agencies of the government have been directly engaged in interfering with the enjoyment of the human rights of Indigenous peoples enshrined in international law and in most cases the state authority is reluctant to prevent violations of these rights by state agencies and other non-state actors.

As a duty bearer, the reluctance and failure of state authority to bear its obligation to respect, protect and fulfill is facilitating perpetrators to commit human rights violations with impunity. There are cases where perpetrators are allowed to go scot-free even after the confession of their felony. Besides, life and safety of the witnesses and the advocates involved in the prosecution process are often threatened when court verdicts are not favorable to perpetrators. Today the discrimination and violence against Indigenous peoples, including women and children continue to be a serious issue. For instance, houses and properties of at least 346 Indigenous families were destroyed and looted in 2013 while 276 families were victimised in 2012. Although many administrators tend to state that most of these violations often have political or economic motivations, and they cannot be attributed to only religious beliefs or ethnic affiliations.

One of the crucial issues in CHT is political intimidation. During the State of Emergency (2007-2008), there are allegations that government agencies misused the emergency powers to arrest innocent Indigenous *Jumma* rights activists in the CHT and in some places in the plains. The most serious cases involved extrajudicial executions, arbitrary arrests under false or at least barely credible charges, and summary trials under dubious conditions. In particular, the government forces targeted *Jumma* political activists and Indigenous human rights activists without political affiliation. Government forces stage-managed arms recovery from those by planting their (army) arms and then used the Arms Act of 1879 to file cases against innocent civilians. During the State of Emergency, at least two innocent villagers have been killed and 50 Indigenous activists have been arrested by government forces. In addition, it has also been reported that at least 20 innocent *Jummas*, including public representatives, women and villagers, have also been arrested or otherwise detained.²³ In most cases, they have been falsely charged in connection with keeping illegal arms, killing, kidnapping and extortion. The court awarded rigorous imprisonment to them after summary trials under dubious conditions.

In plain land, torture to death of prominent Indigenous leader Mr. Choles Ritchil in the custody of the joint forces²⁴ of Bangladesh at Khakraid under

23 Human Rights Report 2007-2008 on Indigenous Peoples in Bangladesh, Kapaeeng Foundation, Dhaka

24 Joint forces consist of Bangladesh army, police and other para-military forces.

Modhupur police station in Tangail district on 18 March 2007 was most remarkable. Mr. Choles Ritchil, who was one of prominent Indigenous leaders to oppose the Eco-Park in Madhupur area, was implicated in all these false cases. The Joint Forces personnel used pliers to press the testicles of Mr. Choles Ritchil and put needle on his fingers. They poured hot water into his nostrils. He was then hanged upside down and brutally tortured. He vomited blood again and again and fainted many times before he died. On 18 March, Mr Protab Jamble, Mr Piren Simsang and Mr. Tuhin Hadima along with Mr Choles Ritchil were arbitrarily arrested before the torture and extra-judicial killing was conducted while they were coming from Mymensingh town in a microbus accompanied by Mr. Ritchil.²⁵

Another recent extra-judicial brutal killing was the torture to death of 52-year-old Duran Babu Chakma (also known as Timir Boron Chakma) while in custody of the armed forces in Matiranga Upazila of Khagrachari district on 10 August 2014. It is also alleged that the victim was cremated amid high security arrangement by both the army and the local police without carrying out any post-mortem examination.²⁶

From confidential documents of the Armed Forces Division of the Prime Minister's Office issued on 30 June 2010, it is learn that the Division planned to facilitate the integration of CHT Indigenous political parties into the dominant national parties. As part of this plan, in April 2014 military forces from various camps in Rangamati district issued a letter to Indigenous political parties to submit the bio-data of its members/leaders to the nearest army camps. The main reason behind this requirement is to harass the members of Indigenous peoples' political parties in CHT.

There are still many cases of torture and arbitrary arrest, showing that there is no guarantee of the freedom of expression for organizations opposed to the military in the CHT. This situation has mounted a structure of oppression in all aspects of life by the military and other security forces, the police, and at times by government officials and Bengali settlers. Furthermore, there appears to be an increase in attempted rape, and it is a matter of concern that rapes, after subsiding for some time, appear to be increasing again.²⁷

25 Torture to death of a prominent tribal leader, Mr Choles Ritchil of Bangladesh, An Appeal to the Heads of Delegations of the 14th SAARC Summit, ASIAN CENTRE FOR HUMAN RIGHTS, New Delhi.

26 PCJSS man 'tortured to death' in army custody, Dhaka Tribune, 12 August 2014

27 Militarization in the Chittagong Hill Tracts, IWGIA Report 14, 2012

Table1: Human Rights violations in 2013 and 2012²⁸

Type of violation	2013			2012		
	CHT	Plain	Total	CHT	Plain	Total
Arrest and detention	29	7	36	1	22	23
Killing	2	5	7	2	6	8
Torture, assault and intimidation	82	41	123	117	16	133
Communal attack	6	4	10	4	5	10
Destruction and looting of house and property	275	71	346	17	259	276
Cross border escape	2000	-	2000	165	-	165
Houses set on fire	46	1	47	-	-	-
Temple ransacked	3	-	3	2	23	25
Idol looted and destroyed	1	3	2	-	-	-
Families fled to safe places for security	1219	-	1219	-	-	-

In 2013, the numbers of human rights violations against Indigenous peoples intensified in some particular issues. At least 11 Indigenous people including 4 women were killed and at least 36 Indigenous peoples, 29 from CHT and 7 from the plains, were arrested and detained either arbitrarily or due to fabricated charges throughout 2013.

During the same period, at least 123 Indigenous people were physically tortured and assaulted. Among them, 82 are from CHT and 41 are from the plains. In some cases, while physical assaults were conducted by influential Bengali miscreants as non-state actors, the state actors such as members of security forces and law enforcement agencies played either supportive or passive roles. At least 8 communal attacks, 6 in CHT (including in the Chittagong Export Processing Zone) and 4 in the plains were conducted by the Bengali settlers and Bengali land grabbers, while houses and properties of at least 346 Indigenous families, 275 from CHT and 71 from the plains were destroyed and looted. In some cases, the houses and properties of Indigenous

²⁸ Human Rights Report on Indigenous Peoples in Bangladesh 2013, Kapaeeng Foundation, 2014.

families were either destroyed or looted but in some other cases the houses and properties were both destroyed and looted by the miscreants. In 2013, at least 47 houses of Indigenous peoples, 46 from CHT and 1 from the plains were set on fire and burnt to ashes by Bengali miscreants, while at least 2000 people of 400 families in CHT fled away to 'no man's land' adjacent to the neighbouring state of Tripura in India due to these communal attacks conducted by Bengali settlers. Another 1219 families had to flee from their homes to safer places for security. At least 3 Buddhist temples in CHT were ransacked and defiled by security forces during their raid as well as an image of Lord Buddha was looted by them from the same temple, while 3 idols of goddesses belonging to temples of Indigenous peoples were destroyed by Bengali miscreants in the plain land in 2013.

The CHT Accord of 1997 was expected to end militarization, systematic human rights violations and a culture of impunity, and allow Indigenous peoples of the CHT to regain control over their lands, resources and local administration. The failure to fully implement the Accord has led to widespread human rights violations. Bengali settlers, often with the help of a section of the military administration, continue large scale attacks upon *Jumma* peoples with the primary aim of grabbing their land. At least 17 communal attacks were committed after signing the CHT Accord. The communal attack at Taindong-Matiranga on 3 August 2013 was the latest. In these attacks, hundreds of *Jumma* houses including Buddhist temples, churches and schools were completely burnt to ashes and looted, several innocent *Jumma* villagers shot dead and several others were wounded and arrested. However, the government did not take any step against the perpetrators. In most cases, the state authorities fail to investigate the incidents. As a result, the offenders usually do not face any prosecution and punishments. This is a direct violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG).

The law enforcement agencies of Bangladesh Government are neither providing adequate protection to the Indigenous peoples nor co-operating in filing cases against the criminals. Rather their negligence of handling the issues of human rights violation is facilitating criminals to commit outrageous and barbaric activities to a greater extent. There are instances where perpetrators are released unpunished even after the confession of their crimes. Besides, life and safety of the witness and the lawyers involved in the prosecution process are often threatened where court verdicts announce punishment against criminals. Discrimination and violence against Indigenous peoples including women and children continues to be a serious issue today.

6. Conclusion

It is important to note that the civil and political rights of Indigenous peoples are linked with the right to self-determination. The right of self-determination is the right of peoples to choose for themselves the form of political organization that will govern the territory in which they live, under the notion that government is to function according to the will of the people governed.²⁹

The issues of civil and political rights of Indigenous peoples in Bangladesh are political problems. It has to be resolved through a political way. Solution of political problem in ensuring political participation of Indigenous peoples is linked with advancement of democratic movement of the country. However,

the democratic, secular and progressive political parties and the civil societies, even though are much vocal for rights of Indigenous peoples, have not yet come up with own programme towards realization of rights of self-determination of Indigenous peoples. Until this day, these parties and forces are seen joining the programmes organised by the Indigenous peoples' organisations which they declare themselves to be in oneness with in respects of unity and solidarity. As a part of the movement to develop democracy in the country, the political parties and civil societies have not yet come up with their own political programme to the extent that is required for ensuring the civil and political rights of Indigenous peoples.


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²⁹ The Right of Indigenous Peoples to Political Participation and the Case of Yatama V. Nicaragua, Maia Sophia Campbell, J.D., University of Arizona, James E. Rogers College of Law, 2007; B.A., Pomona College, 2001.

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12. The Dhaka Tribune, 23 September 2013, Government pre-empts 'adivasi' bill
13. Report of the Special Rapporteur on the rights of Indigenous peoples, James Anaya, Consultation on the situation of Indigenous peoples in Asia, 31 July 2013, A/HRC/24/41/Add.3, para 34
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Establish
Separte Land
Commission
in the
Plains

CHAPTER-IV

Land Rights and Land Alienation of Indigenous Peoples

Goutam Kumar Chakma*

1. Introduction

Bangladesh is characterized by an extremely high population density, a low resource base, and a high incidence of natural disasters. There is degradation of the environment, forest and biodiversity as shown by soil erosion in the hills and mountains of the Chittagong Hill Tracts (CHT) and other regions where Indigenous peoples live.

Bangladesh ratified the *ILO Convention on Indigenous and Tribal Population* (No. 107) in 1972. This convention provides safeguards for Indigenous peoples' individual and collective land rights. The land management system of Indigenous peoples is quite different from general land management system of the country. Indigenous peoples have right to the traditional lands and its resources by the virtue of their common ownership over their territory, and traditional economic activities such as fishing, hunting and gathering are carried out in these areas. They maintain a traditional land management system, which does not require registration of land with government offices.¹ Another international treaty ratified by Bangladesh and relevant to its Indigenous peoples is the *Convention on Biological Diversity*, which contains provisions on the protection of the traditional knowledge systems and genetic resources of Indigenous communities and measures for their equitable utilization (articles 8j and 10c). Unfortunately, most of the aforesaid provisions remain unimplemented or under-implemented, especially in the plains.²

The Government of Bangladesh does not formally recognise the right of Indigenous peoples, particularly those in the plains of the country, 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 Un-classed State Forests (USFs). The traditional land management system is not codified. The non-recognition of their traditional

1 Bangladesh Report on Indigenous Peoples and Protected Areas, Goutam Kumar Chakma, 2008

2 A Brief Account of Human Rights Situation of the Indigenous Peoples in Bangladesh, Indigenous Human Rights Report Preparation Team (Bangladesh), Asia Indigenous Peoples Pact (AIPP), Chiang Mai, Thailand, January-August 2007.

land management system in Bangladesh leads to land dispossession of the Indigenous peoples. Alienation of land has been often accompanied with migration of population i.e. migration of non-local non-Indigenous people to the lands and territories of Indigenous peoples in Bangladesh.³

It is notable that land is not only a source of subsistence but also intimately connected with the identity, integrity and culture of Indigenous peoples of Bangladesh. So, alienation from land has been one of the main problems for the rights and existence of Indigenous peoples in their own territories of the country. Alienation of Indigenous peoples from their ancestral lands and territories commenced since British colonial rule. But land based human rights violations enhanced since the period of Islamic Republic of Pakistan, which emerged as a state on the basis of the 'two nations theory' in 1947. During the time of Bangladesh it got enhanced even further and continues unabated till today.

2. Laws and Policies Related to Land and Their Implications

The *East Bengal State Acquisition and Tenancy Act of 1950* is a major law regulating land administration in the plains, which forbids the transfer of lands owned by aboriginals to non-aboriginal persons without the express consent of the government's district revenue officer. The application of this Act is, however, unequal across the plains. It is used fairly well in some parts of greater Mymensingh district; has less institutionalised practice in Dinajpur district; and not used at all in Rajshahi district. There are widespread reports of non-implementation of this Act, which leads to illegal encroachment by land grabbers belonging to mainstream Bengali community and also by the government for various development programmes.⁴

Section 97 of the *East Bengal State Acquisition and Tenancy Act of 1950* has been seldom respected and executed properly, of course, with some variations in region-wise. As an outcome to it, in most of the districts of the plains, Indigenous peoples have lost almost all their lands and have become absolute minority in populations and scattered in their territories. The highest concentration of Indigenous peoples in the plain districts may likely be, at present, in the Netrokona upazila of Mymensingh. Indigenous peoples (the Garo, the Hajong and the Monipuri) counts about only 30% of the total population of the entire upazila till the date.

On 29 November 2011, the Parliament passed a landmark bill named the *Vested Property (Return) Act 2011* that would enable the return of land property seized from the country's Hindu minority and Indigenous peoples that have been

³ Ibid

⁴ Roy, 2006

expropriated over last four decades. It is mentionable that by dint of this law, Pakistani government dispossessed a lot of minority and Indigenous peoples from their lands in the country. This law was repealed many times and the High Court announced this law as “A Dead Law.” Despite that, this law has been revived and a lot of members from minority communities have got victims to this unjust law and a remarkable number of minority and Indigenous people were compelled to leave the country.

In the case of the CHT, the British government enacted the *CHT Regulation* and declared the CHT as a ‘Backward Tracts’ and totally ‘Excluded Area’ in 1900 and 1935 respectively in order to protect Indigenous *Jumma* people from economic exploitation by non-Indigenous people and to preserve their traditional socio-cultural and political institutions based on customary laws and community ownership of land. In fact several provisions of the *CHT Regulation 1900* functioned as a safeguard for the *Jumma* people and it prohibited land ownership and migrations of non-Indigenous peoples into the CHT. In order to provide lands to non-Indigenous persons, original section 34 of the *CHT Regulation 1900* was a bar. So, it was amended in October 1971 by the then East Pakistan government. Later it was further amended during Bangladesh period in 1979 for providing lands to Bengali settlers.

At the same time, the new amendment of this Regulation allowed non-residents to acquire land rights within the CHT for homesteads, commercial plantations and industrial plants. In the case of the latter, leases for hundreds of acres could now be obtained (by non-residents) without the knowledge and consent of the chiefs and headmen, which was hitherto nearly impossible. This was contrary to the letter and spirit of the *CHT Regulation 1900*, which regarded the CHT primarily as a homeland for its Indigenous peoples, and whose primacy with regard to land and resources rights was guaranteed as against outsiders. The main laws related to land for the CHT are contained in the *CHT Regulation of 1900* (Act I of 1900) and in the Hill District Council Acts of 1989.⁵ The *CHT Regulation 1900*, which is still in force, provides individual rights as well as rights of community ownership of the *mouza* inhabitants on lands and natural resources. But deputy commissioners of three hill districts, who have been, so far, appointed from among government officials from outside the CHT, seldom abide by it.

In 1997 the CHT Accord was signed between the Government of Bangladesh and the PCJSS in order to have an end to the ethnic conflict in the region. With this in aim, provisions, among others, were maintained for restitution of lands and protection of land rights of Indigenous peoples in the CHT. Consequently, the subsequent laws, such as, three *Hill District Council Acts*, *CHT Regional*

5 Halim, Sadeka et al. 2007. “Natural Resource Management Country Studies-Bangladesh Report” in *Bridging the Gap: Policies and Practices on Indigenous Peoples Natural Resource Management in Asia*, UNDP- RIPP, Chiang Mai, Thailand.

Council Act and Rules of Business of Ministry of CHT Affairs were amended or made in 1998. According to the *CHT Accord of 1997* and three Hill District Council Acts of 1989, no land within the boundaries of the three hill districts shall be given in settlement without prior approval of the Hill District Councils and such land cannot be transferred to a person who is not a domicile of the said district without such approval. As per concerned acts, land and natural resources matters were made subjects of three Hill District Councils. The CHT Regional Council was entitled to supervise and coordinate it and Ministry of CHT Affairs was entrusted to deal with it. But it has so far been interpreted otherwise by the deputy commissioners of the hill districts.

In accordance with this provision, prior permission of Hill District Council was to be initiated first and in this sense, applications were to be submitted to Hill District Councils. But, this procedure is not followed till date. Presently applications are submitted to deputy commissioner, who collects report from the *mouza* headmen and upazila level concerned authority and then pass them to Hill District Councils for, in fact, approval only. Land and land management, forests other than reserved forests and water bodies are, as per the *Hill District Council Acts*, subjects of Hill District Councils. But Government of Bangladesh is yet to transfer them these local government institutions. So, the land and land management is mainly dealt by deputy commissioners of the CHT till now. As a consequence, the process of illegal settlement, acquisition and transfer of lands in CHT continues violating the *CHT Accord 1997* and traditional land rights of Indigenous peoples.

Almost in all the 25 upazilas of the CHT the Indigenous peoples have lost their lands, particularly plough cultivable lands in 7 (seven) upazilas, namely, Naikhyongchari, Alikadam and Lama upazilas of Bandarban district, Longadu upazila of Rangamati district and Ramgarh, Matiranga and Manikchari Upazilas of Khagrachari district of CHT and have become minority in there. Also, in the city corporations of three hill district headquarters, the Indigenous peoples are minority. In 1997 when the CHT Accord was signed population ratio of Indigenous and non-Indigenous people of the CHT was 55% and 45% respectively but it got changed to 51 % and 49% in June 2014. It means that if the present trend continues, Indigenous peoples of the CHT also are to become absolute minority as well as scattered in their own territories in a few decades.

3. Forest Policy and Rights of Indigenous Peoples

In 1979 the Government of Bangladesh framed the first Forest Policy and in 1990s took up an initiative for creation of reserve forests over an area of 218,000 acres (89,034 hectares) in the *mouza* forest areas or so-called USF in the CHT. In the recent past years many incidents relating to forcible occupation of lands of Indigenous peoples by Forest Department took place particularly in Bandarban district. It is noted that if the above stated lands of the *mouza* forest areas are

occupied by Forest Department, more than 200,000 Indigenous peoples and local non-Indigenous peoples are likely to be uprooted from their cultivable lands, villages and *mouza* areas in the CHT.

On 28 January 2013, at a meeting in Rangamati presided over by the deputy commissioner of Rangamati district, it was decided to expedite the process of acquiring 84,542.42 acres of land under 22 *mouzas* in Rangamati district for reserved forests. In fact, most of these lands have already been declared 'reserved forest' under section 20 of the *Forest Act of 1927*. If the process, which began in 1982, of acquiring the remaining lands is completed, the entire lands of six *mouzas* and most part of the other *mouzas* will be off-limits to the public, rendering hundreds of *Jumma* families landless. As per decision of a meeting between headmen and Forest Department held on 29 June 2014, Revenue Deputy Collector (RDC) of Rangamati district conducted an inspection to No. 110 Shukuchari *mouza* under Rangamati district and found that there are 46 Indigenous families living on 500 acres of land that they got settlement as per legal procedures. Besides, there are 42 families who also applied for land title. RDC also mentioned in his report dated 7 July 2014 that almost all the lands of rest of the 19 *mouzas* have been either recorded or traditionally occupied by Indigenous peoples. They even created forest and fruit garden on these lands. So, hundreds of families will be evicted if these areas are declared as reserved forest. However, despite such report, the process to expedite the process of acquiring 84,542.42 acres of land under 22 *mouzas* in Rangamati district for reserved forests has not stopped.

There are a number of reserved or protected forests in different parts of the plains as well. Be it in the CHT and the plains, the inhabitants, most of who are Indigenous, of the reserve forests suffer from multiple forms of discrimination. While they are subject to the jurisdiction of the ordinary criminal courts and civil jurisdiction similar to people from other areas, the reserve forest communities suffer from discriminatory behaviour in relation to revenue and land laws. Such laws are under control of the Forest Department and the land rights of Indigenous peoples residing in the reserve forest areas are scarcely recognized except for the cases when special orders or notices of the Forest Department or the Forest Ministry are given.⁶ It is claimed that the government has utterly failed to ensure the rights of reserve forest residents through formal grants.⁷ Formal grants like leasehold rights used to be given to Indigenous Khasi villagers in the Sylhet region following Section 28 of the *Forest Act of 1927* but it was stopped in the 1980s.⁸

6 Roy, Raja Devasish, 2002, *Land and Forest Rights in the Chittagong Hill Tracts*, International Centre for Integrated Mountain Development (ICIMOD), Kathmandu, Nepal.

7 Ibid.

8 Ibid.

The government initiated a process to amend the *Forest Act of 1927*. The amendment bill of the Act was placed in the Parliament in 2012 and was sent to the Parliamentary Standing Committee on the Forest and Environment Ministry for review. Indigenous peoples and forest-dependent communities from the CHT and the plains are not being consulted while amending the Act. Even for the CHT region, opinion of the CHT Regional Council has not been taken so far. It is alleged that if the proposed forest amendment bill is passed in the Parliament as it is, the cultures, traditions and livelihoods of concerned Indigenous peoples, forest dwellers and forest dependent communities will be severely threatened.⁹

The *Forest Act 1927* was framed with an aim to facilitate interests of the British colonials, which is not merely obsolete today in current context but also inappropriate for an independent democratic country. Instead of changing the basic structure and/or adjustment of a few articles, the Act is not in fact adequate to make it people-oriented and effective for environmental protection. In order to formulate an effective and efficient legislation, Indigenous peoples suggested, in line with Section 18 (Ka) of the fifteenth amendment to the Constitution of Bangladesh and concerned international legal instruments, it is necessary to formulate a people-oriented, environment protective and sustainable forest uses act by taking into consideration of the opinions of Indigenous peoples, forest dwellers, forest dependent communities and environmental specialists.

The Parliament adopted the *Wildlife (Protection and Safety) Act 2012* without having consultations with and opinions of CHT Regional Council (in regards to CHT) and Indigenous peoples from both the plains and the CHT of the country on 8 July 2012. Indigenous leaders, environmentalists and rights bodies expressed deep concern over some provisions of the Act. During the adoption of the *Wildlife (Protection and Safety) Act 2012* bill in the parliament, Environment and Forest Minister Hasan Mahmud claimed that the government consulted with Indigenous leaders. However, Indigenous leaders alleged that the government did not organise any meaningful consultation with Indigenous peoples of the country. Conversely, this Act would cause dispossession of lands and affect the rights of forest dependent people and forest dwellers who are mostly Indigenous peoples. The Act did not ensure the minimum rights of the forest dependent people's including the traditional occupations, livelihoods and traditional resource management system.¹⁰

Indigenous peoples often face false and harassful criminal cases for allegedly violating the forest laws. The forest-dependent communities' traditional rights to cultivation, hunting, gathering and so forth are denied, in violation of the

9 Human Rights Report on Indigenous Peoples in Bangladesh 2012, Kapaeeng Foundation, Dhaka.

10 Ibid.

provisions of the *ILO Convention No. 107* and the CBD (both ratified by Bangladesh). For instance, one Garo staggers went under an awful load of over 100 cases. Warrants were issued in 2012 for the arrest of Garo leader killed in 2007. Cases were filed against Indigenous people as they raised their voices against social forestry, eco-park, rubber plantation and land acquisition by the government.¹¹

4. Land Alienation and Its Impacts on Livelihood of Indigenous Peoples

Position of alienation of lands of Indigenous peoples of the country includes the matter of restitution of lands of the Indigenous peoples and also protection of land rights of them as per the laws. This position is deteriorating day after day both in the plains and in the CHT.

In the CHT, outwardly it appears decreased in the recent years. But it does not mean that there has held some improvement on the matter. Forcible land grabbing increased in its intensity in the recent past years particularly since the time of caretaker government in 2007 and 2008. New stakeholders got involved in the process of alienation of the Indigenous peoples from their lands. High level policy makers, organisations like 'Destiny' and commercial farms have got leases of lands in the CHT. As a result, restitution of lands to the Indigenous peoples and protection of land rights of them in the CHT have got a very serious turn.

The massive, unjust and politically motivated population transfer of Bengali settlers in the already land-pressed CHT caused widespread dispossession of Indigenous lands, communal violence including rape, killing, arson etc. leading to huge disruptions to Indigenous livelihood and occupation, including shifting cultivation, herding and grazing, forest-gathering, etc. About half a million Bengali Muslims were transferred into the CHT from the plains without free, prior and informed consent of CHT peoples during 1979-84. They were settled down on the lands of Indigenous hill peoples. Indeed, no cultivable land was vacant for settlement so the settlers started to forcibly occupy the lands of Indigenous *Jumma* people. With an aim to uproot the *Jumma* people from their ancestral land, a long series of massacres were perpetrated by the Bengali settlers with the direct help of military forces. Thousands of *Jumma* people were ousted from their own hearth and home. Livelihood and economic backbone of the *Jumma* people were completely broken down. The settlement of non-resident settlers ultimately degenerated into their forcible occupation of Indigenous lands threatening the means of latter's livelihood.

11 Joint Submission on the Human Rights Situation of Indigenous Peoples in Bangladesh to the UN Human Rights Council for the Universal Periodic Review on 22 April 2013 - 3 May 2013 by the Coalition of Indigenous Peoples Organisations, Kapaeeng Foundation, Dhaka.

In addition, in total 1,877 plots covering 46,750 acres of land have been leased out to non-Indigenous and non-local persons for rubber and horticulture purposes during 1980s and 1990s.¹² Further, huge quantities of lands have been acquired for military purpose in CHT, particularly for the expansion of cantonment, expansion of camps, opening new artillery training centres and new air force training centres. A total 71,711 acres of land including 9,560 acres of land for expansion of Ruma garrison were illegally acquired or were under process for acquisition by the government in the name of military purpose in Bandarban district alone.¹³

Besides, very recently Bangladesh army and Border Guard Bangladesh (BGB) have undertaken various initiatives to establish camps and tourist resorts at various places in the CHT region evicting Indigenous *Jumma* peoples from their ancestral lands and barring *Jumma* peoples from building Buddhist temples and *Jum* (shifting) cultivation. For instances, acquiring land in Dighinala upazila for establishment of BGB battalion Headquarters; eviction of Indigenous residents of two villages at Ruilui village in Sajek union for a tourist resort by army; acquiring land of Ramjadi Buddhist temple in Rowangchari upazila for setting up a BGB Sector headquarters; land acquisition for a tourist spot named Anindya Parjatan Kendra in Ruma by army; threatening eviction of three Indigenous villages in Paindu *mouza* and Poli *mouza* under Ruma upazila for setting up BGB Sector headquarters; acquiring lands for building luxurious commercial resort, restaurant and shopping mall at Dola Mro Para (Jaban Nagar), Kaprupara (Nilgiri), Chimbuk Shola Mile, Owai Junction (Baro Mile) and Keokradong hills under Bandarban sadar and Ruma upazilas; barring local Indigenous people from building statue of Lord Buddha at Dwi-Tila area in Baghaichari upazila and very recently at Gangaram Doar area in Sajek union by the army etc. are most remarkable.

More than 11 business companies including Destiny Group occupied thousands acres of lands recorded and owned by permanent residents of the CHT including Indigenous *Jumma* people. The business companies include Mostafa Group, Laden Group, Shahamin Group, S Alam Group, PHP Group, Meridian Group, Exim Group, Babul Group, Acme Group etc. These business companies continue to occupy lands in order to expand their businesses and areas. Hundreds of Indigenous families belonging to Chak, Mro, Tripura and Marma ethnic groups in Naikgyonhchari, Lama and Alikadam upazilas in Bandarban districts have already been evicted from their ancestral homesteads and lands. The land grabbers frequently made attacks on Indigenous villagers to force them to leave areas. It is alleged that one Laden group alone occupied hundreds acres of land in Lama and is also converting Indigenous children's religion to

¹² According to the Movement for the Protection of CHT Forest and Land Rights.

¹³ Report on the Status of Implementation of CHT Accord, PCJSS, Rangamati, January 2013.

Islam from Buddhism and Christianity by alluring to provide facilities and financial help.¹⁴

Government of Bangladesh took plan to extract coal at Phulbari under Dinajpur district after conducting survey and drilling in 1994-1997 and the Phulbari Coal Project would excavate an immense open pit coalmine in the Phulbari region. It is estimated that about 4,70,000 people, including 50,000 Indigenous peoples belonging to Santal, Munda, Mahali, Oraon, Pahan, Bhuimali, Karmokar, Turi, Hari, Rai and Rabidas ethnic groups, of 67 villages in Phulbari, Nababganj, Birampur and Parbatipur upazilas (sub-district) will be potential victims of the project. The people of the area including Indigenous peoples protested against this project, since open pit mining will mean destruction of the bio-diversity, agricultural system, habitat and means of livelihood of the whole population living in this area. Although the project is currently stalled in the planning phase as a result of massive and sustained opposition within Bangladesh, there is a great concern that the contract between the Government of Bangladesh and the Asia Energy, the mining company assigned in this regard, is not yet cancelled and the Asia Energy is still trying to go on with their original plan of open pit mining. The proposed mine will result in grave human rights violations.¹⁵

Indigenous peoples' right to food gets violated when they are denied of access to land, territories and natural resources. Indigenous peoples owe their miseries to continuing depletion of their natural resources, mainly through the expropriation of their lands. The protection of Indigenous peoples' land and their resources is the key to the realization of their right to food. Unfortunately, the legal guarantee for this essential protection has been revoked in the CHT and is not complied with at the official level in the plains. For example, around 260 Indigenous Khasi families of Aslom Punjee (Nahar-1) and Kailin Punjee (Nahar-2) in Srimangal are under threat of eviction from their ancestral homesteads, which apprehend loss of traditional livelihood and environmental degradation as the Ministry of Environment and Forest dubiously allowed chopping down about 4,000 trees and brutal attack by tea Estate Company in May 2014. The Khasi villagers traditionally depend on trees for betel leaf cultivation. Another alarming issue is the unplanned coal extraction in Meghalaya state of India bordering to Bangladesh which leads to huge soil erosion that affects land of Indigenous and Bengali people at Teherpur upazila in Sunamganj district. Huge amount of lands belonging Indigenous peoples and mainstream Bengali people abandoned their land from cultivation.

14 Human Rights Report on Indigenous Peoples in Bangladesh 2012, Kapaeeng Foundation, Dhaka.

15 Urgent Appeal on behalf of Human Rights Defenders in Bangladesh, submitted to the Special Procedures mandate holders of the Human Rights Council, by International Accountability Project (221 Pine Street, 5th Floor, San Francisco, CA 94104 USA), on September 22, 2011.

Eco parks have been a real threat against the existence of Indigenous peoples particularly those who live in the plains. Eco parks as of now have evicted and threatened to evict numerous Indigenous families in different regions of Bangladesh. As an example, nearly 7,000 families of eight villages at the Sreepur upazila in Gazipur district are in constant fear of forced eviction because of the establishment of 'Bangabandhu Sheikh Mujib Safari Park.' The Forest Department wants to make this park in the vast area in Shalbon, which is home to ethnic Barman community and Bengali people. The officials have told that the Safari Park is being constructed taking consent of the majority of the people of the area. The total project area is 3090 acres, and only 600 acres need to be acquired. Meanwhile, 200 acres of land has been acquired.¹⁶

Land grabbers have not even kept the lands belonging to religious institutions out of their list. A 200-year old Buddhist temple named "South Hnila Bara Buddhist Temple" belonging to Indigenous Rakhaine community was destroyed and looted several times by Bengali land grabbers at Hnila union under Teknaf upazila (sub-district) in Cox's Bazaar district with an aim to occupy 11 acres of land belonging to Buddhist temple. At present the land of this temple is under occupation of land grabbers. Local Rakhaine community urged the Prime Minister of Government of Bangladesh, but restitution of the Buddhist temple is yet to be made so far.

5. Restitution of Lands to Indigenous Peoples

Restitution of alienated lands to the Indigenous peoples is a long-standing demand of Indigenous peoples and civic rights groups of the country. Despite present government's assurance in its election manifesto that "Special measures will be taken to secure their original ownership on land, water bodies, and their age-old rights on forest areas. In addition, a land commission will be formed", the government is yet to take any such measures and form a Land Commission for plains Indigenous peoples.¹⁷

Although *East Bengal State Acquisition and Tenancy Act of 1950* ensures protection of land rights for plains Indigenous peoples in regards to transfer of lands, it does not have any provision for land restitution. So far Indigenous peoples lost thousands of acres of land in the hands of land grabbers. Many plains Indigenous peoples have turned landless and taken shelter in India. The alarming trend of dispossession of the lands of Indigenous peoples in the plains necessitates urgent actions from the government so that the land and land rights of Indigenous peoples of this region can be re-established. Therefore, formation

16 The Star, a weekly publication of The Daily Star, Volume 10, Issue 20, May 27, 2011, Park and People at Loggerheads

17 Joint Submission on the Human Rights Situation of Indigenous Peoples in Bangladesh to the UN Human Rights Council for the Universal Periodic Review on 22 April 2013 - 3 May 2013 by the Coalition of Indigenous Peoples Organisations, Kapaeeng Foundation, Dhaka.

of a separate land commission for the plans Indigenous peoples is urgently needed. In fact Indigenous peoples from the plains have been asserting for a land commission for long. However, how and when this land commission would be established still remains illusive.

Besides, though the Government has finally decided to repeal Schedule B from the *Vested Property (Return) Act, 2013*, but still Indigenous and minority peoples have been facing problem to get back those vested lands. In 2011, two separate schedules were inserted i.e. one showing the properties vested under the possession of the government and the other the possession vested under the personal possession. The properties under Government consist 197,420 acres which have been leased out to different individuals and companies which require to be renewed each year. The properties under personal possession entail 445,720 acres. But without any justification it has grown huge public resentment for marking these large amounts of properties as vested property.

The process of returning the vested property to the rightful owner is yet to start. There were some good provisions but it was not enough to address minority people's demand to return all seized properties to their rightful owners. Most of Indigenous people have not applied for returning their vested property due to failure to collect the necessary documents from land office and local union council office and financial constraints. Many Indigenous villagers are not aware how to collect the documents and how to apply.

In case of the CHT, it is encouraging that Government of Bangladesh signed the 16-Point Package Deal in 1992 and the 20-Point package Deal 1997 with the leaders of the returnee *Jumma* refugees, who took refuge in 6 (six) refugee camps in India's Tripura State and the CHT Accord with PCJSS in 1997, where provision has been included for restitution of lands to the real owners, the Indigenous peoples or concerned Hill District Council in the CHT.

As per these deals, in order to show its sincerity in rehabilitation of the refugees and thereby resolve the CHT crisis by peaceful means, some families of the refugees were given their lands back at once through the Task Force on Rehabilitation of Returnee *Jumma* Refugees and Internally Displaced *Jumma* Persons in 1992 and in 1997. But, this process got stopped on the pretext that it was the CHT Land Dispute Resolution Commission, which would settle land disputes in the CHT. The Task Force was reorganized since 2009 but it took up no such step to return lands to the repatriated families and to rehabilitate them on their lands.

This task force, as per the CHT Accord, is to provide rehabilitation to the Internally Displaced *Jumma* People (*Jumma* IDPs) as well. But, the process stopped in 2000 due to false claim raised by the Government of Bangladesh side particularly by the army authorities for rehabilitation of the non-local non-Indigenous peoples (political migrants of 1980s) in CHT as Internally

Displaced Persons (IDPs). Of course, in June 2013 the Task Force adopted a decision to provide economic facilities to the *Jumma* IDPs. But, this decision is yet to be executed. Same way, restitution of lands of them is yet to be made. During the period of the present Government the Task Force neither held any meeting nor took any initiative for the purpose.

In accordance with the *CHT Accord 1997*, Government of Bangladesh enacted the *CHT Land Dispute Resolution Commission Act 2001* to settle land disputes in CHT. As it contained some provisions contradictory to the related provisions of the CHT Accord so Government, on the face of demand of PCJSS, had to refrain from executing it. Hence, the Land Commission constituted since 1999 could not function till date and even no single land dispute has been resolved so far.

6. Land Based Human Rights Violations

Bangladesh government has failed to address land rights of Indigenous peoples, which left thousands of Indigenous peoples homeless both in the CHT and the plains. An Amnesty International report states, there are 90,000 internally displaced people alone in CHT.¹⁸ The major threat to displacement from their homesteads and farmlands is 'land-grabbing'. Due to lack of government initiative, they continue to be dispossessed of their lands by Bengali settlers and land grabbers. An increasing influx of other actors such as private corporations, criminal syndicates, fundamental militant groups and politically powerful individuals has also been intensifying the problem. Besides, thousands of Indigenous families have already been evicted from their homesteads due to large-scale development projects such as extractive industries, logging, establishment of military/para-military camps, training centres, tourist spots, eco-parks, rubber plantation and forestation. These acts of land alienation are contrary to the applicable national and regional laws and policies (e.g. the CHT Accord), and international laws (e.g. the ILO Convention No.107 & 169) that provide safeguards for land rights of Indigenous peoples.

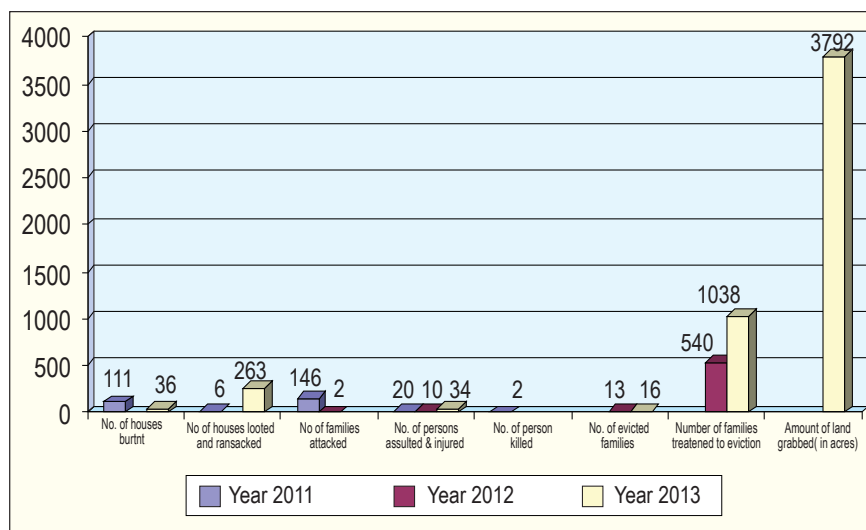
In the recent years land based human rights violations upon the Indigenous peoples got enhanced in the country. Land grabbing has been significantly intensified particularly in 2013 compared to 2012. In 2013, a total 3792 acres of lands in the CHT were grabbed or were under process for occupation and acquisition while 34 acres of land in the plains were occupied. Of the total grabbed land in CHT, 3717 acres of lands were grabbed by mainly outsider private parties and 75 acres by the government. Throughout the year, 26 families were evicted from their homesteads and 1062 families including 24 families in plains were under threat of eviction. A total of 66 families were attacked in the plain land with an aim to occupy land of Indigenous peoples. 34 Indigenous persons were either assaulted or injured during these attacks and

18 Report on the Present State of Implementation of CHT Accord, PCJSS, January 2013

278 houses were looted. In connection with land-related fabricated cases and incidents, police arrested 10 Indigenous persons. At least 200 Indigenous families fled to India from different districts of north Bengal during last five years (2009-2013) due to land grabbing, false cases and harassment, physical assault, sexual harassment against Indigenous women by Bengali land grabbers. Besides, land grabbers with the help of forest official chopped down 500 betel leaf trees, the prime source of livelihood of Indigenous Khasi people, in Sylhet. Furthermore, allegations of irregularities and misappropriation of funds of Climate Change and forestation projects in CHT has been raised. In comparison to 2012, land grabbing and attack on Indigenous families regarding land-related conflicts dramatically increased in 2013.

The latest attack was committed on 6 August 2014 on an Indigenous women rights activist and elected member of Union Council while she was working in her farmland. In a press statement, parliamentary caucus on Indigenous peoples claimed that locally influential quarters carried out the heinous attack with an aim to grab her land. The victim's family has sued 18 people, but police have so far arrested only seven of them.¹⁹

Figure-1: Land related incidents in CHT: 2011, 2012 & 2013



Source: Human Rights Report on Indigenous Peoples in Bangladesh 2013, Kapaeeng Foundation

Bengali settlers and land grabbers, influential political leaders and government officials, businesspeople often with the help of civil and military administration,

¹⁹ Rape of Adivasi Women's Leader, JS body demands arrest of rapists, The Daily Star, August 19, 2014

continue large scale attacks upon Indigenous peoples with the primary aim of grabbing land. In 2011-2013, at least 28 communal attacks in the CHT and the plains were committed by the land grabbers and Bengali settlers with the direct support of local administration while 33 Indigenous persons were brutally killed with the intension to make fear and horror among Indigenous communities and ultimately to uproot them from their ancestral homesteads and lands. In this attacks, hundreds of houses of Indigenous peoples including temples, churches and schools were completely burnt to ashes and looted.

The process of alienation of Indigenous peoples in different areas of the plains got increased. The police and the concerned administration too have not been properly responsive to the grievances of Indigenous peoples. For instance, On 6 June 2013 a gang of about 200 Bengalis led by Mohammad Azizur Prodhan of Bhelain village of Ghoraghat upazila under Dinajpur district fell upon 4 (four) villages, namely, Bagjapara, Tibahipara, Raghunathpur and Dighipara of Bulakipur union of the same upazila of the Indigenous peoples for evicting them from their lands and territories. On the day the miscreants equipped with lethal weapons attacked the Indigenous peoples, irrespective of women and children. In the incident more than 30 Indigenous persons were injured and cattle, vehicles and household goods of 65 families were looted. A patrol party of police of Ghoraghat police station were present there but witnessed the incident silently.

It is very alarming that migration of non-Indigenous peoples from different parts of the country has been resumed particularly in CHT. Few buses, at present, ply weekly from North Bengal districts like Bogra and Rajshahi and other parts, which regularly carry families of non-Indigenous peoples from different regions to CHT. Such a bus while plying from Bogra slipped down the Chittagong-Rangamati Road to the creek on 7 June 2014 at Sapchhari Hill area about 300 metres west of Rangamati Television Centre of Rangamati Town and 6 (six) persons received precarious injuries in it. But, this news was not even published in any news media or newspaper, probably out of political reason and due to control of local authorities of Government of Bangladesh.

7. Conclusion

Rights to land and natural resources of Indigenous peoples in the CHT and the plains of Bangladesh are still being violated in an alarming manner. In most cases, the state authority fails to investigate properly the alleged human rights violations committed directly by security forces and forest guards as well as by third parties such as Bengali settlers, illegal land grabbers, private companies and local administrations. In the CHT, hidden patronization of security forces to Bengali settlers in human rights violations has generated a state of anarchy which fuels to amplify the existing ethnic tension and ethnic conflicts. Indigenous victims of human rights violations from both the plains and the

CHT are often neither provided with essential protection nor co-operated in filing charges against the perpetrators. As a result, the offenders usually do not face any prosecution and punishments – they enjoy absolute impunity. This encourages perpetrators further commit human rights violations. Therefore, the government should come forward with good will to reconstitute the right to land of Indigenous peoples and take measures to end human rights violations related to land.

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Photo : Saichay Chakma



CHAPTER-V

Present Status of Social, Economic and Cultural Rights of Indigenous Peoples

Anurug Chakma* and Pallab Chakma*

1. Introduction

This study has specifically focused on the brief present status of social, economic and cultural rights of indigenous peoples of Bangladesh. For the convenience of the study, the paper has been divided into several parts. In the beginning, introductory discussion of this study has been presented. This part presents an overall picture about the present status of social, economic and cultural rights of indigenous peoples of Bangladesh. The second part deals with the major areas of gross violations of social, economic and cultural rights of indigenous peoples. The concluding part forwards some policy recommendations on how to address the concern of human rights violations.

It has generally been recognized that indigenous peoples are one of the most marginalized, backward and poverty-stricken groups across the globe. As identified in many researches, they are under threat to survival due to destruction of their livelihood, cultures, languages and social systems. In Bangladesh too, indigenous peoples have been experiencing highest level of discrimination, deprivation and exploitation over generations which breaches the commitment of the state asserted in the Article 19 (1) & (2) of the Constitution of Bangladesh that “the state shall endeavour to ensure equality of opportunity to all citizens and adopt effective measures to remove social and economic inequality among people and to ensure equitable distribution of wealth among citizens.” Indigenous peoples are being forced to flee from their homesteads; indigenous women are being raped and killed; indigenous children are being abducted and assimilated in the mainstream societies; their identity is ignored; their existence is viewed as a threat to national unity and solidarity. Even, in the school text book ‘Bangladesh O Bishwa Parichoy (Introduction to Bangladesh and the World)’ of class five published by the National Curriculum and Text Book Board (NCTBB) the food habit, clothing, language, and other aspects of culture of indigenous peoples have been presented with distort information. For example, “Mro people are generally Buddhist ... one of the most delicious foods they eat is *nappi*. The Tripuras’ houses are higher than those of Chakmas and Marmas.”¹ This is an embarrassing presentation of the government in the question of indigenous peoples of Bangladesh.

1 Cited from Kapaeng Foundation Report-2013, p. 187-188.

Indigenous peoples are deprived, discriminated and exploited for a set of factors in Bangladesh. Firstly, perpetrators know that they are helpless, powerless and second class citizens. There is no guardian or authority to protect the rights of these peoples. As a result, in most of the cases, perpetrators can enjoy the culture of impunity even after committing serious crime. Secondly, perpetrators are mostly from mainstream society. They control the state mechanisms like – legislature, administration and judiciary. For this reason, the position of indigenous peoples is inferior to the perpetrators in the society. Thirdly, psychology of the people of mainstream society is also another factor as observed in the social interactions. Indigenous peoples are weak, they can be hurt, their properties can be looted, their houses can be burnt to ashes, their lands can be grabbed – the psychology of superiority encourages perpetrators to dishonour or violate the social, economic and cultural rights of indigenous peoples. Fourthly, illiteracy, unconsciousness and poverty of Indigenous peoples are also important factors accountable for violations of human rights against Indigenous peoples in Bangladesh.

As found in many newspapers and research reports, different actors or perpetrators violate the social, economic and cultural rights of indigenous peoples in Bangladesh. These actors can be categorized into three types - (i) influential individuals like political leaders, business people and military officers who have intention to capture the properties of indigenous households. (ii) government agencies like security forces and law-enforcing agencies, local administration and forest department constitute one of the major groups of perpetrators; (iii) corporate bodies like Destiny and Laden Group who poses severe threats to the culture and social systems of Indigenous peoples through capturing their lands illegally.

Indigenous peoples of Bangladesh have almost no control over their lives in true sense. They cannot determine their economic, cultural and social system freely. Under such critical situation, the Parbatya Chattagram Jana Samhati Samiti (PCJSS) has been leading the movement for the right to self-determination since 1972. As Amena Mohsin (1997: 63) writes:

In the new state of Bangladesh, Bengalis who constituted the new ruling elite and the core ethnic were not only the immediate neighbors of the hilly people, but more importantly this group endeavored to create a Bengali-dominated homogenous state in Bangladesh under the rubric of Bengali/Bangladeshi nationalism. The state's political and economic policies were geared to attain this. The hill people, perceiving their identity to be under threat, attempted to counter it by demanding an autonomous status for themselves but it was not accepted by Bengali ruling elite (Mohsin, 1997: 163).

2.1. Identity Crisis

According to different international human rights instruments (*ILO Convention No. 169 UNDRIP*), an individual has the right to choose his or her own identity. Unfortunately, indigenous groups living in different parts of the country are facing a common problem i.e. a threat to their identity. In the opinion of Hana Shams Ahmed (2010):

While the 1972 constitution was even-handed to all religions, it did not recognize the fifty or more indigenous peoples and their distinct identities, who still remain as second class citizens of Bangladesh. When the draft of the Constitution was presented to the Constituent Assembly in 1972, Manabendra Narayan Lama (Founder of PCJSS) refused to endorse a Constitution that did not recognize the existence of other ethnic origins than Bengali. He had protested: Under no definition or logic can a Chakma be a Bengali or a Bengali be a Chakma ... As citizens of Bangladesh we all are Bangladeshi, but we also have a separate ethnic identity.

In April 2010 the government has passed a bill titled *Small Ethnic Groups Cultural Institutes Act* in the Parliament despite the protest of indigenous peoples. This Act has recognized only 27 ethnic communities although the actual number is above 48². As observed, indigenous peoples are very frustrated and dissatisfied with the policy of the State. During 15th Amendment of the Constitution, despite legitimate demand of Indigenous and progressive groups of mainstream peoples, the Parliament failed to recognize the distinct identity of indigenous peoples, instead termed them as 'tribes, minor races, ethnic sects and communities'. Similar to the country's first constitution adopted in 1972, its 15th Amendment passed in 2011 also imposed Bengalee nationality on diverse ethnic groups, other than Bengalees, living in the country. Article 6.2 of Bangladesh Constitution reads -"The people of Bangladesh shall be known as Bengalee as a nation and the citizen of Bangladesh shall be known as Bangladeshis". Following this hegemonic policy of the State, different Indigenous political parties and organizations demonstrated through organizing public gatherings and forming human chain in different parts of the country to protest the 15th Amendment of the Constitution that recognizes all the citizens residing within the territory of Bangladesh as Bengali in terms of national identity.

2.2. Religious Persecution

The Constitution in its present makes up contains these phraseologies thrice: "... Absolute trust and faith in almighty Allah and nationalism..." in the

2 Adivasider Sangbidhanik Swikri (translated), Mangal Kumar Chakma, Bidhayak Chakma, page 11, Kapaeeng Foundation and Manusher Jonno Foundation, 2011, Dhaka, Bangladesh

preamble, in Articles 8(1) and 8(1A). Moreover, by inserting Article 2A, Islam was made the State religion. But it also advocates for equal status and equal rights for other religious groups to practice their religions in the Article 41 (a) that “every citizen has the right to profess, practice and propagate any religion”. These changes in the Constitution have some inner significance in creating polarization among the citizenry based on religion. For example, a psychological gap was permanently created between the majority Bengali Muslim population and other communities (Reza, 2006: 6). These changes can simply be considered as the strike on the pillar of secularism, one of main roots of spirit of our glorious liberation war.

Religious persecution against indigenous peoples is severe throughout the country. For instance, on 21 May, 2009, Captain Shamim of Bagachari army camp under Naniarchar upazila in Rangamati district allegedly harassed and tried to beat Rev. Bishuddananda Bhikku, Chief priest of Ratnankar Buddhist Temple in Naniachar along with his fellow monks and novices while he was returning from Mahalchari upazila after attending a religious event of Tarachari village at Kengalchari area (Kapaeeng Foundation, 2010: 129). On 29 July 2011, forest officials destroyed a Cherangghar (religious house) of indigenous peoples in Alikadam under Bandarban district. On 28 January 2012, a group of Bengali settlers ransacked a Buddhist meditation centre which is situated at Harinchara Beel under Bilaichari upazila in Rangamati. Due to objection from the army, land could not be settled in the name of Furamon International Meditation Centre in Sapchhari union of Rangamati district despite public assurances by the State Minister of the MoCHTA.³

It can also be added that government administration and security forces of Dui-Tilla camp barred the local indigenous people from building a statue of Lord Buddha in Ajalchug Temple area in Baghaichari upazila under Rangamati district. On 30 April 2014, upazila administration imposed section 144 in that area for an indefinite period of time. Local indigenous people believe that the main target of the administration for imposing section 144 was to stop them from building the Buddha statue and create an opportunity for the settlers to grab their land. On 22 July 2014 security forces and local administration of Baghaichari upazila prevented Jumma villagers to build a Buddha statue at Gangaram Doar area near Ujo Bazar under Sajek union in Baghaichari upazila. Another example is an initiative to set up a BGB Sector Headquarters on the land of Ramjadi Buddhist temple in Tarasa mouza under Rowangchhari upazila in Bandarban district. On 4 May 2014, the local Buddhist community of Ramjadi

³ Joint Submission on the Human Rights Situation of Indigenous Peoples in Bangladesh’ submitted to Human Rights Council for the Universal Periodic Review of United Nations Office of the High Commissioner for Human Rights Sixteenth Session, 22 April 2013 - 3 May 2013 by Coalition of Indigenous Peoples Organisations (Annex-1: List of member-IPOs), Kapaeeng Foundation

temple area staged a human chain and protested against alleged land grabbing of Buddhist temple. Even they submitted a memorandum to the Deputy Commissioner of Bandarban district demanding to stop land acquisition for BGB Sector Headquarters on said land.⁴

These cases reveal that the non-Muslims in the CHT are being persecuted very frequently. The same scenario is also found in the plains. For example, land grabbers ruined and looted a 200-year old Buddhist temple of the indigenous Rakhaine community located at Teknaf under Cox's Bazaar district several times in the recent past with an eye to grab the temple's precious land. On 29-30

September 2012, a group of fanatic Muslims vandalized 19 temples and 40 dwelling houses of Buddhist community and looted more than 200 houses in Cox's Bazaar district.⁵ At least 28 Buddhist and Hindu temples across the country were ransacked and looted while 4 idols of goddesses belong to temple of indigenous peoples were destroyed by Bengali miscreants in the CHT and plain land throughout the 2012-13.⁶ Nobody can imagine how the fundamentalists can continue their ferocious activities to destroy religious minorities in an independent country particularly in the presence of law-enforcing agencies.

2.3. Economic Discrimination and Deprivation

From the very beginning, indigenous peoples of Bangladesh have unfortunately been experiencing economic discrimination and deprivation at all levels of the society although they took part in the liberation war with the great aspiration of abolition of all kinds of discrimination and deprivation. The following paragraph has represented how indigenous peoples face discriminatory behaviour of the nation-state.

Indigenous peoples frequently raise their concerns about systemic discrimination and outright racism from the state and its authorities. This discrimination manifests in a number of ways such as frequent and unnecessary questioning by the police, condescending attitudes of teachers to students or rudeness from a receptionist in a government office. At their most extreme, these forms of discrimination lead to gross human rights violation, such as murder, rape, and other forms of violence etc. (UN, 2009: 205).⁷

To understand the context of Bangladesh, just take some cases concerning discrimination and deprivation of the government towards indigenous peoples.

4 Kapaeeng Foundation's report, www.kapaeeng.org

5 *ibid.*

6 Human Rights Report on Indigenous Peoples in Bangladesh 2012 & 2013, Kapaeeng Foundation, Dhaka.

7 State of the World's Indigenous Peoples (2009), United Nations, New York.

8 Kabita Chakma, "A Second Kaptai Dam?", the Daily Star, Dhaka, 4 February, 2014.

The capacity of hydro-electricity production of Karnafuli Hydroelectricity Power Station is 218 Megawatt but 95 percent of electricity is used for the development of plain, not the CHT where electricity is produced⁸. The per capita income, literacy rate and dependency ratio of indigenous peoples are far lower than the national level. Over and over this, the increasing rate of unemployment, deteriorating public health, infant and maternal mortality, widespread malnutrition, and infectious diseases etc. are leading the indigenous peoples to great frustration (Islam, Chowdhury, and Islam, 1999). Prof. Mesbah Kamal (2010: 14) conducted a study under the title “*Budget and Indigenous Peoples (Translated)*” in which he highlighted the following aspects of socio-economic condition of indigenous peoples.

- Although indigenous are 1.08% of the total populations (Census 2001), only 0.35% ADP⁹ has been allocated for indigenous peoples in FY¹⁰ 2009-2010.
- In FY 2009-2010, per capita ADP allocation for overall Bangladesh was BDT 1, 996.98; Indigenous peoples in the CHT, together with their local Bengali counterparts, received a per capita ADP of BDT 1440.88. For PLAs¹¹ the amount was BDT 83. 64 only.
- Per capita ADP allocation for overall Bangladesh was more than three times higher than allocation for indigenous people.
- Allocation for PLAs increased a little in 2008-09 during caretaker government but decreased for the CHT.

Table.1: Per Capita Adivasi ADP (2002-2010)

Fiscal Year	Non-Adivasi	Adivasi
2002-2003	1,447. 99	696.99
2003-2004	1,506. 98	699.80
2004-2005	1,607. 62	790.15
2005-2006	1,762. 29	814.34
2006-2007	1,840. 95	831.04
2007-2008	1,846. 95	727.86
2008-2009	1,766. 66	533.18
2009-2010	1,996.98	593.77

Source: Kapaeeng Foundation, 2010, page. 173, Dhaka

9 ADP means Annual Development Programme.

10 FY means fiscal year.

11 PLA means Plain Land Adivasis (Adivasis, the Bengali meaning for Indigenous peoples).

It is also notable that in the last five fiscal years since 2009-10, the government's allotted Tk. 2,943 crore for Ministry of CHT Affairs whereas only Tk. 74 crore was for indigenous peoples of plain land. Compared to the CHT, the government's allocation for about 20 lakhs plain indigenous peoples is very poor.¹² Besides, Professor Abul Barkat (2008) found that the ratio of poverty between Bengali settlers and indigenous is 55%: 65%. Inequality can be at the same stage all over Bangladesh between indigenous and non-indigenous.¹³ The following Table-1 reflects the per capita Adivasi ADP (2002-2010).

No doubt, the above discussion can help us to understand how social discrimination operates against indigenous peoples at various levels in different ways. According to Bangladesh Indigenous Peoples Forum 'Even when measures are undertaken by government agencies (and to a lesser extent, by NGOs) for indigenous peoples, the proposed beneficiaries are seldom consulted prior to the formulation development projects or in the process of implementation.'¹⁴

2.4. Deprivation of the Right to Education through Mother Tongue

Indigenous peoples are also deprived of the basic right to education through mother tongue. Article 3 of the Constitution has asserted that the state language of Republic of Bangladesh shall be Bengali. This apparently very innocent Article makes the constitution mono-national. It has breached the spirit of the language movement which has made Bangladesh different from the rest of countries of the world. Bengalis wanted to speak through their mother tongue, they won; however, in Bangladesh constitution, they ignored the same rights of other smaller nations after independence (Reza, 2006: 7). Thus, indigenous children have systematically been deprived of their basic right to education through mother tongue. Although the *CHT Accord 1997* and *ILO Convention No. 107* have particular provisions about introducing primary education in mother tongue for indigenous and tribal children.

Despite absence of government initiatives to introduce mother tongue based primary education for indigenous children, different community based organizations and NGOs are running program in the plains to facilitate indigenous children's education in mother tongue. For instance, Jatiya Adibasi Porishad (JAP), an organization working for the rights of indigenous peoples of plains, has established first Multilingual Education (MLE) School in Bangladesh for Santal students at Barshapara in the Godagari upazila of Rajshahi in 1999. As

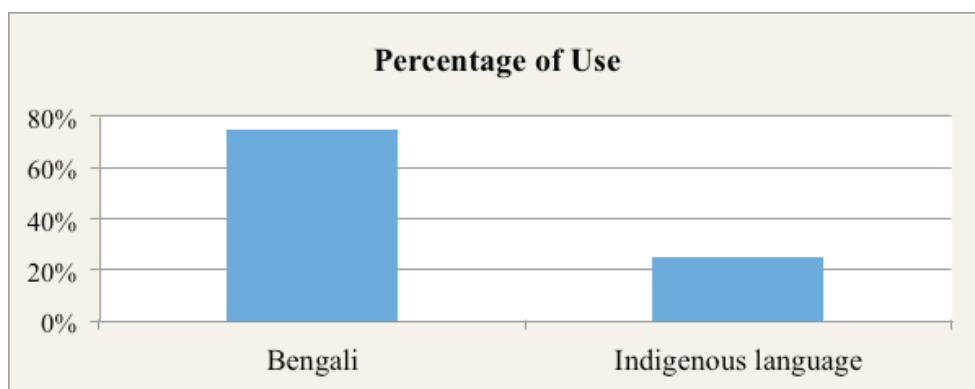
12 The Daily Star, Dhaka, 26 May, 2014.

13 Cited from Prof. Mesbah Kamal (2010), "Budget and Adivasis (2010)", Research and Development Center (RDC), 1/E/2 Poribag, Dhaka-1000, Bangladesh (Visit the following Website: rdc-bd.org).

14 Bangladesh Indigenous Peoples Forum, 2003, An appeal from the indigenous peoples of Bangladesh, Dhaka.

the Santals in Bangladesh do not have their own script, they have adopted both Bangla and Roman as their alphabet and now the students are thought tales and stories of Santal culture and heritage by those adopted alphabet.¹⁵ An NGO named Grameen Trust has supported the JAP to run the MLE School. Besides, now Gonoshasthaya Kendra, Ashrai, Zabarang and other NGOs are working on indigenous children's multilingual education in the plains and the CHT.¹⁶

Figure-1: Use of Language in the Primary Education in the CHT



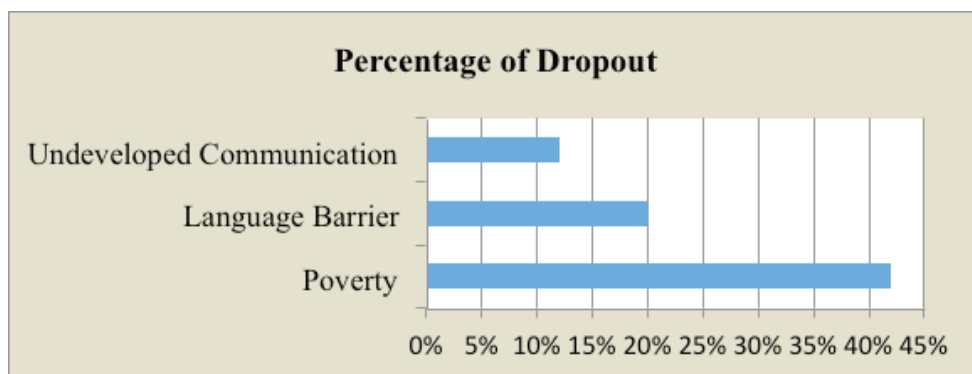
Source: *Bangladesh Indigenous Peoples Forum, Sanghati, Dhaka, 2008, p. 31.*

It is noteworthy that the Article-18 of the *National Education Policy* asserts that “The government shall ensure the recruitment of indigenous teachers and reading materials for facilitating the education of indigenous children through their mother tongue”, Nevertheless, there is no implementation of this law in practice. In addition to the ILO Convention No. 107, in which Bangladesh itself is a signing state party, its article 23(1) has obliged the state parties for taking proper step to ensure the right to education through mother tongue for those children who belong to indigenous and tribal communities. Because of having no scope of learning through mother tongue, it is estimated that about 55.5% of indigenous children of 6-10 age group are not enrolled in school, which is well below compared to national average (ADB, 2001). The dropout rate of indigenous children is also much higher than the estimated national rate (Tripura, 2010: 169). On the other hand, the rate of drop-out of indigenous children in the CHT is 60 % - 70% at the primary level as reported by Bangladesh Indigenous Peoples Forum (BIPF). There are three main reasons accountable for drop-out (see the following figure-2).

15 Mapping of Multilingual Education Programs in Bangladesh, Mesbah Kamal, Jens Stratmanns, Monis Rafiq & Shah Shamim Ahmed, UNESCO, Dhaka, 2014.

16 Ibid.

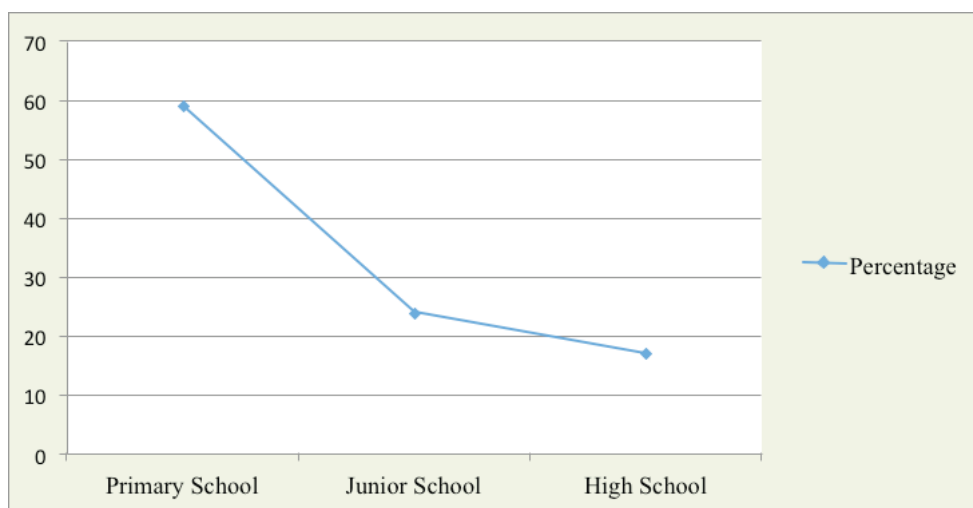
Figure-2: Reasons of Drop-out of Indigenous Children at Primary Level in the CHT



Source: Bangladesh Indigenous Peoples Forum, Sanghati, Dhaka, 2008, p.-31.

Manusher Janno Foundation, a national NGO in Bangladesh also carried out a research on the situation of primary and secondary education system in the CHT in 2012. In this research it has been found that the percentage of dropout of indigenous students is very alarming. The major findings of their research have been described in the following figure-3.

Figure-3: Drop-out Percentage from Different Education Level



Source: This figure has been produced based on the database of Manusher Jonno Foundation, Alokita Pahar, Dhaka, 2012, Vol. 3, p. 11.

It was also observed that there is only one primary school for every five villages in the CHT whereas there are two schools for every three villages in the plains. For better understanding, we can take the case of Mohadevpur in Sitakunda upazila, the locality of Tripura indigenous peoples, where there is no school for educating indigenous children. Some years ago, a NGO named SPEED established a primary school at the Chota Kumira locality where some indigenous students are receiving education up to class V. No child is found in the locality who has received education up to class VIII although the Article-20 of the *National Education Policy-2010* states that “The government shall establish primary school in those indigenous localities where there is no school. The housing facilities of teachers and students would be given special consideration”.¹⁷ This reveals that children in the CHT have less opportunity for education compared to children in the rest of Bangladesh. There is also significant variation in terms of enrolment in primary level. The net enrolment rate is 56% in the CHT, whereas it is 77.1% in the whole country.¹⁸ This is the way how indigenous children are being deprived and discriminated.

2.5. Deprivation of Basic Facilities

Although it has been stated in the Article 15 (a) of the Bangladesh Constitution that it shall be a fundamental responsibility for the state to ensure the provision of the basic necessities of life including food, clothing, shelter, education and medical care, indigenous peoples living in Sylhet have no access to safe drinking water and hygienic sanitation. In the study of Mummad Azizul Hoque, Raquibul Alam and others (2007), it has been found:

The indigenous areas far from urban areas are mostly vulnerable due to contaminated water and least sanitation coverage ... The sanitation facilities, latrines, solid water management economy are in vulnerable situation in the indigenous area.

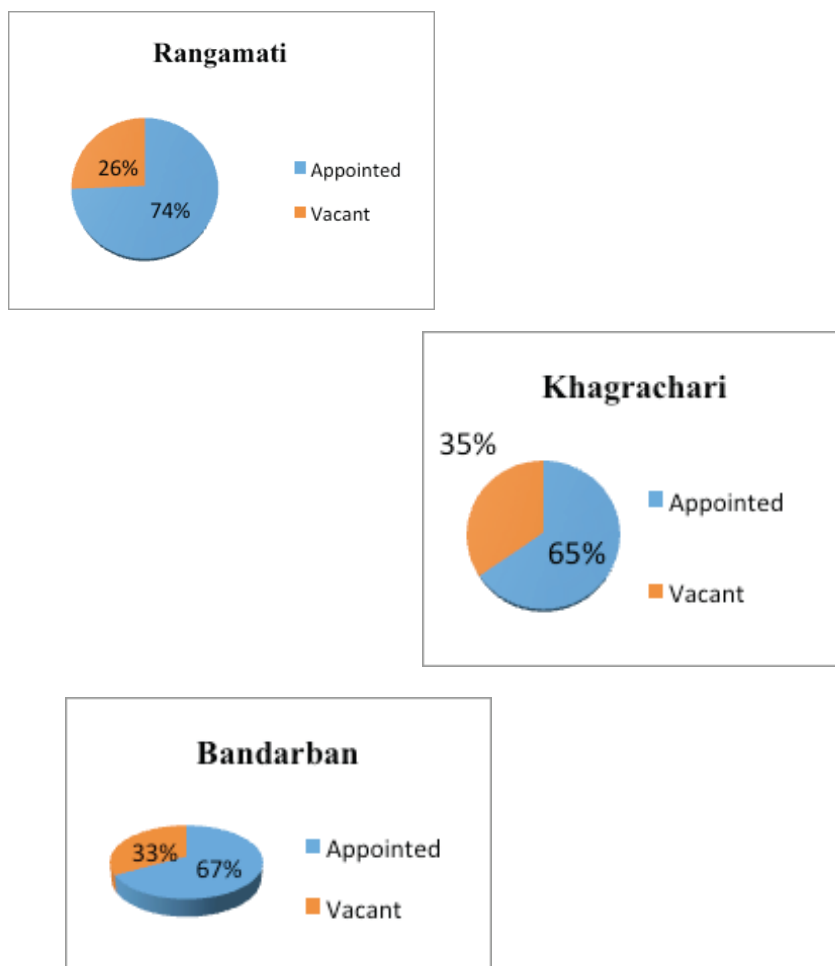
This is also significantly true for the indigenous peoples of other regions of the country. I have provided two figures (figure 4 and 5) to show the actual scenario of the education sector of the CHT. As the **figure 4** shows, 26% of the total teaching positions are vacant in the secondary level in Rangamati district whereas the percentage of Khagrachari and Bandarban are 35% and 33% respectively. At college level also, 36% for the position of Lecturer, 23% for the position of Assistant Professor and 37% for the position of Associate Professor are vacant in the three hill districts. With a significant percentage of vacancy for the position of teaching staff in the secondary and higher secondary level, it can

¹⁷ Biplob Rahman, “Slavery at the hill of Sitakundu (translated)”, Jum magazine, Dhaka, 2012, pp. 50-51.

¹⁸ Counting the Hills, Assessing Development in Chittagong Hill Tracts, edited Mohammad Rafi and A Mushtaque R. Chowdhury, UPL, 2001.

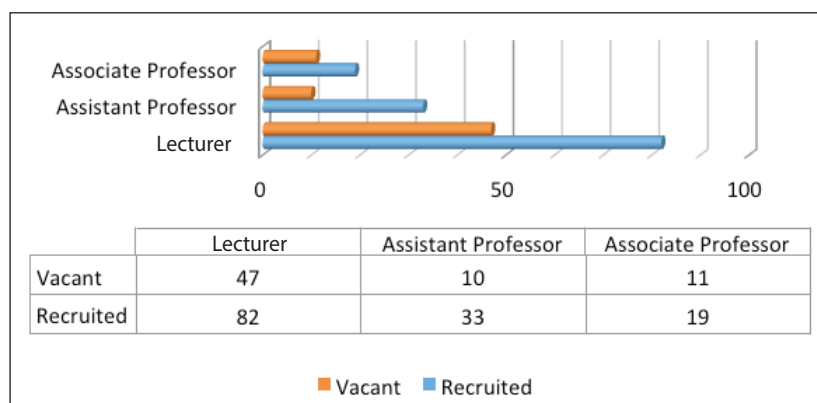
be said that the educational facilities of the CHT is not satisfactory. The same worse condition can also be found in health sector which is very much crucial for survival. Nobody can imagine in the modern age, how the health sector can provide services to the local peoples with large shortage of manpower. In Rangamati, 30% of the total positions available in the health department have not been recruited whereas the percentage of Khagrachari and Bandarban constitute 56% and 88% (see the figure 6).

Figure-4: Percentage of Appointed and Vacant Posts in the Secondary Schools of Three Hill Districts



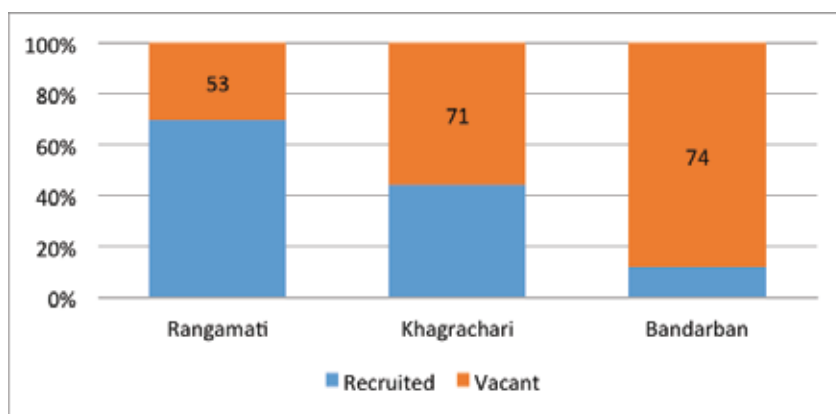
Source: Working paper on 4th meeting of the Parliamentary Standing Committee on Ministry of Chittagong Hill Tracts Affairs in the 10th Parliament, 2014.

Figure-5: Number of Appointed and Vacant Teaching Position in the Government Colleges of Three Hill Districts



Source: Working paper on 4th meeting of the Parliamentary Standing Committee on Ministry of Chittagong Hill tracts Affairs in the Parliament, 2014.

Figure-6: Number of Appointed and Vacant Positions in the Health Sectors of Three Hill Districts



	Available Positions	Recruited	Vacant
Rangamati	175	122	53
Khagrachari	127	56	71
Bandarban	84	10	74

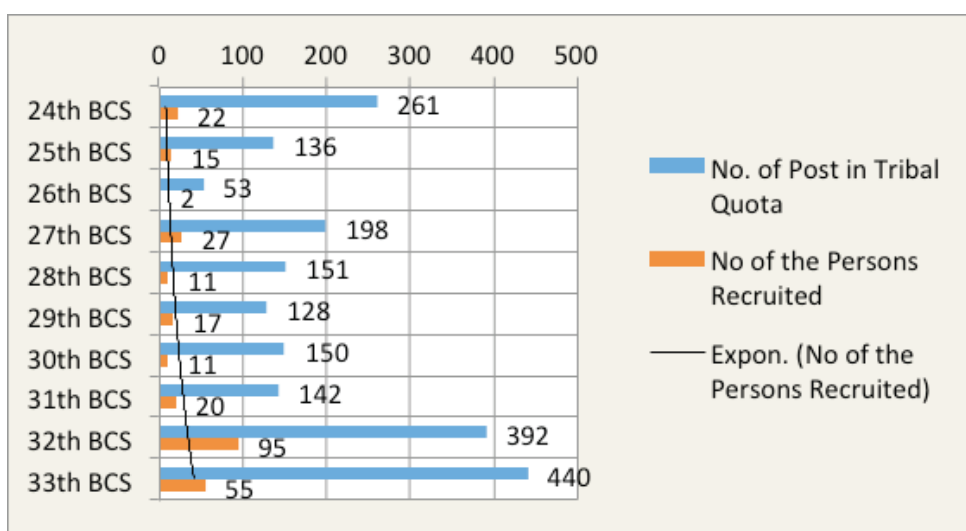
Source: Working paper on 4th meeting of the Parliamentary Standing Committee on Ministry of Chittagong Hill tracts Affairs in the Parliament, 2014.

Furthermore, Md. Faizur Rahman and Mokaddem Hossian (2007) carried out a study on the reproductive health of indigenous women. In their study, they also found that indigenous women face different types of barriers in accessing reproductive health care facilities: (i) discriminatory practices towards indigenous women; (ii) language barrier in the case of sharing their problems with the doctors; (iii) lack of education; (iv) imbalanced diet; and (v) lack of nutrition are the main obstacles.

2.6. Discrimination in the Sector of Employment

Most of indigenous peoples of Bangladesh are living with economic hardship. They are facing multi-dimensional economic problems ranging from poverty to unemployment. This problem has been identified as one of the major problems of indigenous peoples in the research titled *Socio-Economic Baseline Survey of the Chittagong Hill Tracts* conducted by Abul Barkat et al. Besides, the figure-4 illustrates about the landscape concerning the appointment from indigenous candidates in the positions of Bangladesh Civil Service (BCS) cadre. As the figure shows, the number of recruitment is much lower than the number of available positions allocated for indigenous candidates. After breaking down the figure on year basis, it is found that only 22 indigenous candidates were appointed against 261 positions in the 24th BCS. The same case is observed in other BCS examinations.

Figure-7: BCS Recruitment against the Number of Positions



Source: Cited from the Kapaeeng Foundation's Human Rights Report-2013, p. 193.

Every year Bangladesh government send thousands of migrant workers to the middle-eastern countries as labourer. These labourers are the major source of earning remittances for the country as well as their respective families. However, indigenous persons do not get this opportunity. The ministry of Expatriates' Welfare and Overseas Employment has no initiative to include indigenous people in this field.¹⁹

2.7. Wage Discrimination

Sometimes indigenous peoples are not provided with equal salary compared to the peoples of mainstream community due to their ethnicity although the Constitution in its Article 15 (b) states that "the state shall ensure the right to work that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of the work." Article 34 (1) also adds that "all forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. But these great laws are silent if it is applied for indigenous peoples. For example, about 10,000 indigenous Tripura people from different localities including Chota Kumira, Bora Kumira, Sultani Mondir and Mohadevpur under Sitakundu and Mirasarai upazila of Chittagong district have been living in a slavery system for a long period of time. They are being forced to work in the paddy fields and orchards of their landlords for generations. They are ill-paid for their work. A day laborer earns Tk. 140 a day.²⁰ If anyone does not work, s/he has to pay fine, or is forced to leave his homestead, or is punished by the owner of the paddy lands and gardens.

This is also significantly relevant for indigenous urban migrants too. A good number of young Garo girls have migrated to cities and are working in the beauty parlours. They often face discrimination and harassment at work place. Most of them earn Tk. 2,000-4,000 per month which is not sufficient to survive. They work for almost 10-12 hours per day; in many parlours they do not even have weekly holidays. The Garo girls merely get the permission to meet their relatives or go out with friends. Sometimes the girls are battered by their employers for minimal mistakes. In Export Processing Zones (EPZs), the indigenous garment workers are also working with poor salary.²¹

In the plains, particularly in Sylhet, the indigenous female workers are being subjected to wage discrimination. In spite of doing the same amount of work as male workers do, they earn only half the amount of wages than their male

19 Bangladesher Adivasi: Ethnographiyo Gobeshona (translated), edited Mangal Kumar Chakma et al., published by Bangladesh Indigenous Peoples Forum and Utsa Prokashan, Dhaka, 2010.

20 *ibid.*

21 'Beauty Parloure Mandir Meyera Kemon Achhen?' published by Garo Indigenous Michik Association, 2006

counterparts. In addition, they are also discriminated in terms of receiving other rightful facilities as workers.²² In the 165 tea gardens, the daily payment of 85,000 registered and 15,000 unregistered indigenous labourers stood at Tk. 55 with concluding an agreement, which was Tk. 48 earlier. The span of the agreement has already expired on 31 August 2011. Since then the groups of tea labourers started to put several demands including wage increment immediately after expiration of the agreement, where they demanded to fix the daily payment to minimum 150 taka.²³ Although the agreement has expired, the owners have not renewed the agreement with the groups as hearings continue in the court and the labourers continue to be deprived. Therefore, the frantic labourers have been continuing their democratic movements such as simultaneous strikes in all tea gardens of the country with an eye to advance their 18-point demand and to fix the minimum wage at 150 taka. The president of Bangladesh Cha Samsad (tea association) Safwan Chowdhury stated that, the labourers are deprived due to the division of the union leaders. Nevertheless, considering the humanitarian side Tk. 7 increment was ensured as 'interim relief'. The actual pay increment will be given from the termination date of the agreement. If the conflict of leaders is settled, the pay increment issue can be also resolved.²⁴ Government has a decisive role in addressing this problem. Article 140 (a) of the Labor Law has authorized government to take proper step to declare new wage structure or to change or amend the existing wage structure consulting with owners and labourers. Hence, government should come forward with actions in this regard.

2.8. Threatening Occupation and Livelihood through Eviction

Discriminatory attitudes and policy of government against indigenous peoples are evident everywhere. For instance, it can be said, shifting cultivation is often regarded as a 'primitive' and 'unscientific' form of cultivation in the eye of the government. Similar views are also held in terms of hunting, trapping and gathering which are closely linked to the food security and livelihood practices of indigenous peoples.

Land is intertwined with the lives and livelihood of indigenous peoples. Denial of access to land, territories and natural resources is violation of basic right to food of indigenous peoples. Therefore, protection and preservation of indigenous peoples' land and their resources is the key to the realization of their right to food. Unfortunately, the legal guarantee for this essential protection has been revoked in the CHT and is not complied with at the official level in the

²² *ibid*

²³ Human Rights Report on Indigenous Peoples in Bangladesh 2012, Kapaeeng Foundation, Dhaka.

²⁴ *ibid*

plains. For example, more than 600 indigenous Khasi and Garo families who have been living for long time at Nahar-1 Khasi Punji (around 200 acres of land) and Nahar-2 Khasi Punji (250 acres of land) in Srimangal upazila under Moulvibazar district are now under threat to eviction. On 30 May 2014, the Bengali land grabbers attacked on 79 Khasi families at Nahar Punji-1, a hilltop village of the indigenous Khasis with an aim to grabbing land that belong to Khasi people.²⁵ The Khasi villagers are dependent on trees for betel leaf cultivation over centuries. The same case took place in Madhupur, Tangail where around 25,000 indigenous people left in the lurch as government took initiative to implement controversial project named National Park Development Project ignoring rights of indigenous peoples. No government has ever complied with the forest laws to recognize the land rights of indigenous Garo or Mandi and Koch, traditional inhabitants of the Madhupur Sal Forest, rather used the forestland for non-forestry purposes. The department filed hundreds of cases against local indigenous people accusing them of illegal logging, while the indigenous people alleged those cases were filed only to harass them. Around 25,000 indigenous people of 8,630 families now live in 63 villages in and around Madhupur in coherence with the forest and its ecology.²⁶

Besides, about 7,000 families including indigenous Barman community of eight villages at Sreepur upazila in Gazipur district are in constant fear of forced eviction because of the establishment of 'Bangabandhu Sheikh Mujib Safari Park.'²⁷ In the CHT too, thousands of acres of lands are illegally and forcefully being occupied by Bengali settlers, corporate bodies, government institutions and influential persons. Such type of anti-indigenous policy is threatening the occupation and livelihood of indigenous peoples. Without lands and forest, the agro-based lifestyle of indigenous peoples cannot be imagined.

2.9. Social Discrimination against Indigenous Peoples of North Bengal

Although Article 28 (3) of Bangladesh Constitution has stipulated that "No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution", but the indigenous peoples have been experiencing structural discrimination for a long time in Tanore, Rajshahi. An NGO named Broti has conducted a research project titled 'Setubandhan'. During field study, the researchers have found that the local Bengalis do not respect the human

25 The Daily Star, Sunday, 01 June 01 2014, Friday's Attack in Srimangal, Khasis fearing further aggression.

26 The Daily Star, August 25, 2009, Prisoners of forest.

27 Kapaeeng Foundation's 'Joint Submission (2013).

rights and dignity of indigenous peoples and do not treat them as human beings. A group of 30 indigenous researchers from Broti's Tanore office conducted an observation splitting the team into 3 groups, each containing 10. The members of Team No. 1 went to have food at Mr. Aziz's Restaurant. The owner of the restaurant refused to serve them with food because of being indigenous. The other groups also encountered similar behaviour when they went to nearby restaurant.²⁸ Due to staging human chain and protests by local human rights and indigenous peoples organizations, discriminatory behaviour against indigenous peoples stopped at Tanore Sadar of Rajshahi. However, the situation remain unchanged at remote places of Tanore.

The main reason for social discrimination and social exclusion lies in psychology of mainstream community that the culture of the indigenous peoples is uncivilized, primitive and inferior. In north-western Bangladesh, social discrimination faced by indigenous people is so severe that many ethnic Bengalis refuse to serve food and drinks to indigenous persons in rural hotels and restaurants which is undoubtedly a strong strike on the spirit of liberation war and progressive state-building.

3. Conclusion

It is crucial that indigenous peoples' economic, social and cultural rights are closely related to their right to self-determination, their right to lands, territories and resources. Indigenous peoples' rights to culture is often violated through denial of ownership over, and access to land, territories and natural resources, and violation of constitutional provisions, the ILO Convention No 107, East Bengal State Acquisition and Tenancy Act (1950) and customary laws of indigenous peoples, as acknowledged in the UNDRIP, the CHT Accord of 1997 and post-Accord laws passed by the national Parliament. Finally, it can be concluded that indigenous peoples of Bangladesh are deprived of their social, economic and cultural rights as enunciated in the national and international human rights instruments. For this reasons, they constitute the most vulnerable and marginalized group of the country. Some measures should be taken by different actors (such as- state, political parties, NGOs, civil society groups and mass media) for addressing the concerns of violations of human rights against indigenous peoples.

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28 Human Rights Report on Indigenous Peoples in Bangladesh 2011, Kapaeng Foundation, Dhaka

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CHAPTER-VI

Quest for Security, Equality, Equity and Integration: Locus of Indigenous Women in Bangladesh

Parboti Roy* and Myentthein Promila*

1. Introduction: the Situation of the 'Other' Women

Indigenous women in Bangladesh like other Indigenous women in other parts of the world experience subordinate socio-economic status compared to their male counterpart or the women folk of non-Indigenous origin. The overall situation of Indigenous women belonging to over 48 groups is very common. They live in subjugation in a patriarchal society, oppressed doubly by their male counterparts and also by the mainstream Bengali people. In the era of globalization, the Indigenous women in Bangladesh are yet to break the vicious cycle of segregation and unfairness in a broader sense, though some of them from both the Chittagong Hill Tracts (CHT) and the plains are coming out to challenge the status quo dominated by male chauvinism.

Indigenous women constitute about half the overall Indigenous population in Bangladesh. But they are victims not only of repression and negligence for centuries, but also of violence such as rape, sexual harassment, sexual assault, kidnapping and murder which are in most cases perpetrated by members from the mainstream communities. Occasionally they also confront violence from men within their own communities. Indigenous women are traditionally considered as occupying a lower socio-economic and political standing than their male counterparts, and encounter various forms of human rights violation. The human rights situation in the CHT was especially awful during the armed conflict which lasted more than 20 years. They continue to confront gross human rights violations till today. The state of plains Indigenous women is no different -they endure human rights violations similar to their CHT's counterparts.

Another aspect of human rights violations against women occurs in the wake of development programmes and projects. Multiple development interventions are being launched overlooking the needs and interests of Indigenous women living in the rural, forest and hilly areas, which often results in the violations of their human rights. These development programmes also have severe impact on their traditional economic activities (Roy, P 2013 p. 64). They have not been

given the opportunity to get involved in independent decision-making that affect their lives. These range from both the practical and strategic gender needs including access to and control over healthcare, education, natural and material resources, and justice system both at the traditional and the mainstream levels and other sources of socio-economic and political rights. Moreover, economic inequality and discriminatory social and cultural attitudes reinforce women's subordinate position in the society. The objective of this chapter is to portray overall scenario of indigenous women in Bangladesh. It underlines several critical areas of violence against women, and the state of indigenous women in the socio-political and administrative structure. The impact of development programmes and projects concomitant with globalization on women's traditional economic activities will also be considered. Besides, women's access to healthcare and education will be focused briefly. However, we cannot rule out the limitations that we are likely to face in depicting a broader picture of indigenous women as we have limited access to essential and adequate sources of information on indigenous women from the plains. Given the shortcomings, the first section of this chapter will look critically into the national policy mechanisms in Bangladesh. The second section will attempt to give an account of indigenous women's situation in Bangladesh in the aforementioned areas followed by the concluding remarks.

2. State Policies and Indigenous Women: Question of Integration

Bangladesh ratified almost all the major human rights treaties applicable to women including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a treaty that addresses and provides remedies for the constant oppression and discrimination women including Indigenous women confront every day. Unlike for other treaties, the performance of the State in this regard is to some extent satisfactory. Ever since it became a signatory, Bangladesh has been quite active in reporting to the CEDAW Committee about women's human rights situation in the country. Besides, the State has formulated laws and policies for the protection and promotion of the rights of women at the domestic level. While the Constitution provides specific provisions on women, Bangladesh has enacted some important laws and policies for women including *Women and Child Repression Prevention Act (amendment) 2003* and *National Women's Development Policy 2011*. However, many of the government laws and policies on women are aimed at the atypical cases of discrimination faced by ethnic Bengali women in the plains. Since the social, cultural and economic contexts are different, many of these laws and policies are not appropriate for preventing discrimination against Indigenous women. The inadequacies of these policies are seldom recognized in the national discourses on women's rights, which are dominated by the concerns for Bangla-speaking middle class women overlooking the concerns of the minority groups.

Besides, in terms of the ratification of international women rights treaties, there are some remarkable interventions and initiatives by the Bangladeshi Government to eliminate Violence Against Women (VAW) in the Chittagong Hill Tracts (CHT) and the plains. In addition, section 376 of the Penal Code of Bangladesh provides that whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (Kapaeng Foundation 2013). As part of such women-friendly legislative initiatives three separate courts were set up in the CHT in 2008 to resolve the cases of torture on women and children under the *Prevention of Women and Children Repression (Prevention) Act 2000*. The government has also set up a victim support centre in Rangamati for the first time to provide rehabilitation assistance to women victims with the support of UNDP-CHTDF program. *The National Women's Development Policy* (NWDP) of Bangladesh adopted in 2011 succinctly contains some provisions on Indigenous women. It is also mentionable that no provision for Indigenous women is included in earlier editions of the NWDP. Indigenous women rights groups criticized the government for not taking into consideration the Indigenous women's rights and concerns while formulating the *National Women's Development Policy* in 1997, 2004 and 2008 (Chakma, B 2013). However, some provisions on Indigenous women have been incorporated in the NWDP 2011, though the policy terms Indigenous peoples as "backward and small ethnic groups". It is to note that Indigenous women face unique discrimination distinct from the women of the mainstream population. Indigenous women rights activists admitted that the government did not even consult the Indigenous women in formulating or amending the NWDP. It lacks several issues which are crucial for Indigenous women (Kapaeng Foundation 2011).

The Constitution of Bangladesh states: "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens" [Article 289(4)]. However, the reality is far from what the Constitution stipulates. As it was seen earlier, government does not take the rights and concerns of Indigenous women into consideration regardless the fact that they fall in both the categories of 'women' and 'backward section of citizens.'

Likewise, there is no reflection of Indigenous voice in the Gender Budgeting Report 2014-15 of the government of Bangladesh. The Ministry of Women and Children Affairs and the Ministry of Chittagong Hill Tracts Affairs set several strategic objectives for the advancement of women (Ministry of Women and Children Affairs 2014; Ministry of Chittagong Hill Tracts Affairs 2014). However, the voices and needs of Indigenous women are invisible in the reports.

Besides, there is a provision in the *National Labour Policy 2012* for the 'marginal and backward' population who belong to 'tribe, minority nationalities, ethnic groups and other communities' mentioning opportunities for employment and equitable working environment (Tripura 2014 p. 27). Nevertheless, there is absence of any particular provision for Indigenous women and measures to preserve the diverse traditional economic activities as part of perseverance of Indigenous culture. Therefore, it is apparent that the existing national policies on women and gender in Bangladesh tend to condone the concern and issues of Indigenous women.

3. Violence against Indigenous Women: Threat to Women's Security

Violence against Indigenous women has been a burning issue in the country especially due to the number of incidents of violence against Indigenous women continue to rise unabated day by day both in the CHT and the plains. During the armed struggle waged by the Parbatya Chattagram Jana Samhati Samiti (PCJSS) between mid-70s and early 90s in the CHT, Indigenous *Jumma* women were affected in a number of ways. Women as child-bearers are considered as important for the biological continuation of a nation; rape therefore is used systematically as a deliberate tactic to destroy or damage the 'enemy'. *Jumma* women were victimised by the Bengali security forces in two ways: as a member of the 'enemy' and as a woman (The Chittagong Hill Tracts Commission 1991, p.87). By raping a woman, the oppressor does not just aim to hurt her personally, he takes away what is particularly a woman's private possession and at the same time tramples and humiliates the identity of the people as a whole. During that time, at least 2500 Indigenous women from the CHT were raped, most of which were perpetrated by the members of security forces (Mong 2002, cited in Naher and Tripura 2010 p. 194). Besides, the hostile environment caused many women, men and children to flee to India and a large number to be displaced internally. Many Indigenous *Jumma* families became separated and women were forced to become the head of many households. For these women who were left without male member, the public and private dichotomy did not exist. They had to take the triple burden of responsibilities including productive, reproductive and community role. They were in a constant struggle, juggling between household responsibilities, earn their livelihood in such a hostile situation and in many cases assist the combatants through providing them food and shelter.

The CHT remains a highly militarized region despite the presence of the *CHT Accord 1997* signed between the Government and Indigenous peoples' political party, Parbatya Chattagram Jana Samhati Samiti (PCJSS). Among others, the Accord provides for a phased withdrawal of all temporary camps and the transfer of power to civilian authorities in the CHT region. Interlocutors alleged that since 2007, most incidents of sexual violence have reportedly been



Photo : Jidit Chakma

perpetrated by Bengali settlers, who are seldom prosecuted for such crimes. In some cases, rape is also used as a weapon to weaken or harm rival communities or groups. The UN Special Rapporteur on Violence against Women heard testimonies of ongoing violence and rape of indigenous women by Bengali settlers in the Chittagong Hill Tracts (Rashida Manjoo, 2013, para 13, 20).

However, all these atrocities did not continue without any resistance from the Indigenous women in the CHT. In response to the vehement resistance movement of Indigenous women (and men) of the CHT, steamroller of repression of the State somewhat turned even harsher. A particular case in this point is the abduction of Ms. Kalpana Chakma, then the organising Secretary of Hill Women's Federation, on 12 June 1996 from her home at Lalyaghona village of Baghaichari in Rangamati by a group of members of security forces. The trace of her whereabouts has not been found as of yet and it is suspected by many that she has been killed. Unfortunately, after passing so many years of her abduction, the alleged perpetrators are yet to be brought to justice. Though the era of armed struggle ended with signing of the CHT Accord in 1997, violence against Indigenous women in the CHT continue till today – more or less similar to the way it was during that period.

When it comes to the plains, Indigenous women of this region did not undergo a situation similar to their counterparts in the CHT. The basic differences between these two regions are in some policies undertaken by the state. While entire CHT was militarized, state-sponsored transmigration of Bengali settlers was conducted and different counter-insurgency strategies were undertaken by

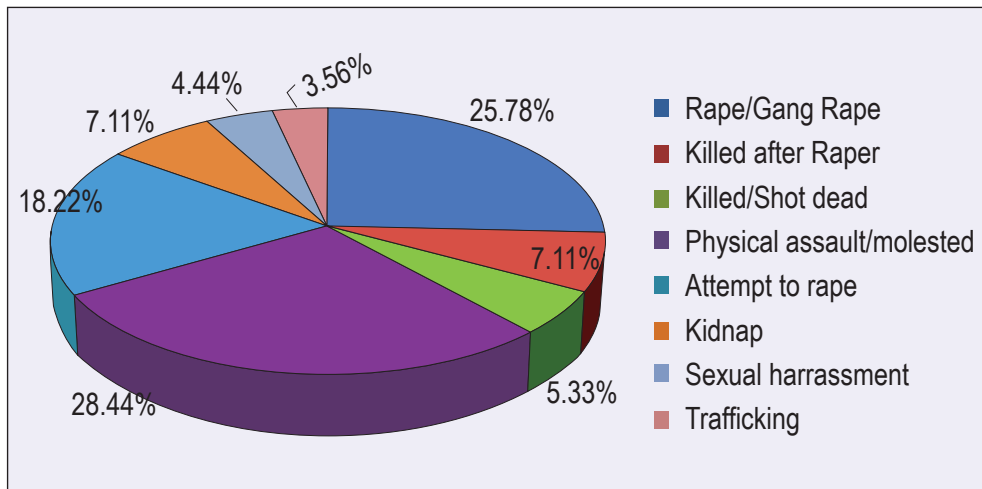
the state for the CHT, it did not happen in the plains (except for some cases when the country as whole was affected). However, it cannot be said that Indigenous women in the plains remained safe from violence. Though there is a dearth of adequate statistical data available, it is generally known that Indigenous women of the plains suffered from a whole range of human rights violation since the independence of Bangladesh in 1971. Many of such human rights abuses were in relation to land. As a result, hundreds of Indigenous families not only turned landless and took refuge in India, but also became victims of different forms of violence, when women remained the prime victims. Violence against Indigenous women in the plains continue to occur till now.

Since no effective mechanism has been developed to prevent violence against Indigenous women both in the plains and the CHT, the number of human rights violations is increasing day by day. The record shows that none of the perpetrators of sexual violence against Indigenous women and girls were punished till date since the formal judicial courts in the three hill districts of the CHT were set up in 2008. From January 2007 to July 2013, there were at least 227 reported incidents of violence against Indigenous women of which 176 from the CHT and 51 from the plains (Kapaeng Foundation 2014 p. 154). As per table 1 below, most commonly reported form of violence against Indigenous women and girls in Bangladesh are rape, attempted rape, rape-slay, murder, physical assault/ molestation, abduction, sexual harassment and trafficking. For example, 30 out of 75 victims of sexual violence in 2013, were children under 16 years. Alarming increase of cases of sexual harassment along with trafficking have been added as new forms of human rights violations in 2013 (Kapaeng Foundation 2014, pp. 170-171).

Table 1: Types of Violence against Indigenous women in Bangladesh (2007-2013)

Year	Rape	Rape-slay	Murder	Physical assault/ molestation	Attempted rape	Abduction	Sexual harassment	Trafficking	Total
2007	5				3	1			9
2008	3		1						4
2009	2	2	2	6	3	1			16
2010	7	3	2	6	5	2			25
2011	11	5	2		8	5			31
2012	17	4	3	36	13	2			75
2013	15	2	2	16	9	5	10	8	67
Total	61	16	12	64	41	16	10	8	227

Figure 1: violence against Indigenous women in Bangladesh (2007-2013)



Source: Kapaeeng Foundation Human Rights Report 2013

The table and the figure show the type and percentage of sexual violence committed against Indigenous women in Bangladesh between 2007 and 2013. It is clear from the table that 15 Indigenous women and children were raped in 2013 whereas in 2007 the number was five only. The majority of the cases of sexual violence occur mostly in the CHT compared to the plains. Attempt to rape were made on nine Indigenous women including three from the plains while ten women were sexually harassed by Bengali settlers in the CHT. According to Kapaeeng Foundation report (2014, p. 154), five Indigenous Tripura girls were rescued from a *Madrasa* in Dhaka who were taken from the CHT for the purpose of forced conversion into Islam. Again, the police also rescued three Indigenous girls from Faridpur-Rajbari crossing on Dhaka-Khulna highway while they were being trafficked to India. They were enticed away by the traffickers on the promise of providing them well-paid jobs. Besides, six Indigenous women were abducted, and 16 were physically assaulted and molested. 69% of the all women victims were under 18 years. The report also unearths that 89% of the perpetrators are from Bengali settlers, while 7% are from Indigenous communities and 4% are from the security forces (Kapaeeng Foundation 2014, p. 156).

There are many pending cases on human rights violations against Indigenous women in different courts across Bangladesh due to unanticipated problems

such as lack of follow up of particular cases, complex court procedures, lack of awareness, inadequate legal aid support centres, less interest to run a case for its prolonged process, lack of financial capacity, and over reliance on government to run victims/victim families' cases on their behalf. There is in fact no such remarkable case which can be singled out to prove that justice was ensured for Indigenous women through the formal justice system till date due to the above mentioned gaps except for one rape and murder case of Morium Murmu of Rajshahi district in the plains. Another verdict was given on a rape case in September 2013, from a *Nari O Sishu Nirjatan Daman Tribunal* in Chittagong (Kapaeng Foundation 2014, p. 156). Such example might help to bring trust and hope to Indigenous women that there are consequences for rape and punishment is non-discriminatory irrespective of one's ethnic background. However, in most cases it is being presumed that the pervasiveness of the 'culture of impunity' makes Indigenous women increasingly vulnerable to and victims of sexual, physical and communal violence (Costa 2014, p.31). The current legal aid support practice and culture initiated by the government and NGOs are not considered effective and efficient enough to ensure justice for Indigenous women as well as to save them from the risk of becoming victims of violence. There is a lack of sustainable mechanism to engage government officials and civil society members such as NGO representatives, human right activists and defenders, lawyers, women rights activists for the right of access to justice for Indigenous women.

The following table illustrates the current scenario of violence against Indigenous women in Bangladesh since January to June 2014:

Table 2: Violence against Indigenous women in Bangladesh: January to June 2014

Month	Rape		Attempted rape		Rape-slay		Abduction		Total
	Plains	CHT	Plains	CHT	Plains	CHT	Plains	CHT	26
January		2		1		1			
February		1		1		1			
March		3		1					
April	4	1		1				1	
May				2					
June	2		1	1		1		1	

Source: Kapaeng Foundation¹

¹ The statistical data is derived from Kapaeng Foundation reports disseminated through e-mail

The table shows that in the first six months of 2014, 26 cases of violence against Indigenous women were reported in Bangladesh. Most of the cases are related to rape, attempted rape, rape-slay and abduction. The table is the clear indication of the pervasiveness of sexual violence against Indigenous women.

An Indigenous women leader, member of Parbotipur Union Council was raped and assaulted physically by a group of Bengali land grabbers in Gomostapur Upazila of Chapainawabganj district unit on 4 August 2014. The police arrested few of the alleged perpetrators upon a case filed with the police station, but the mastermind of the incident and his companions are yet to be held. It is mentionable that the survivor is a very active organizer not only for Indigenous women's rights but also for the protection and promotion of rights of the Indigenous people in her region (Kapaeeng Foundation 2014).

On the other hand, a research conducted by Kapaeeng Foundation in 2013 (cited in Costa 2014), unveils that the causes behind sexual violence against Indigenous women are: the communal policy of the state; culture of impunity enjoyed by the culprits; prolonged procedure of legal prosecution and biased environment; lack of legal knowledge among the Indigenous population; inexperience of Indigenous peoples to pursue legal procedure; corruption in the administration and law enforcement agencies in handling the trial of cases of sexual violence; non-implementation of the CHT Accord; paucity of adequate legal and financial support to pursue the cases by the victims and their family members; failure to follow up and review of the cases; lack of security of the victim and victim's family members; and dearth of national human rights organization's and women's organization's commitment to provide adequate support to trailing of cases. From the observation of such dreadful situation of women, it is apparent that a culture of impunity has been a single most crucial factor that is contributing to the current situation of violence against Indigenous women and girls (Costa 2014, p.31).

4. The Situation of Indigenous Women in the Society: Patriarchal Inheritance System

The Indigenous societies in the CHT and the plains are embedded on patriarchal family and inheritance system which mostly follow the patrilineal lines with few exceptions among Marma, Khasi and Garo communities. The social status of Indigenous women is lower than their male counterparts in terms of inheritance rights, decision making as well as legal and political rights to some extent (Halim et. al. 2007, p. 77). They can generally take decisions regarding every day small household issues, but in terms of major issues, men arguably enjoy greater decision making power. In none of the social structures in the CHT and the plains, the presence of Indigenous women is taken seriously for social and political change.

The customary laws and traditional values have guided the inheritance system of Indigenous peoples. Indigenous women's dependence on men within the family is reinforced by asymmetrical rules of inheritance. The common trend of Indigenous peoples in the CHT and the plains is that only sons inherit property. Generally, daughters cannot claim paternal property. They are provided with financial support until their marriage. Among Indigenous peoples of the CHT, only Marmas have given women some property rights although the Marma society is patrilineal and children take over the clan title of the father. Unlike any other Indigenous communities in the CHT, Marma widows are entitled to claim the property of their deceased husbands. Similarly, the daughter is also entitled to claim the property of her deceased mother (Chakma, S 2011, pp.28-41). Among Indigenous peoples in the plains, two ethnic groups are shaped in the matrilineal line by custom – Garos in greater Mymensingh and Khasis in greater Sylhet. Women of both of the ethnic groups inherit properties. The youngest daughter in Khasi community usually takes the responsibility of her parents. At present, this system is at stake due to the influence of the custom of non-Indigenous Bengali people (Asian Indigenous Peoples Pact 2007, pp.20-30). However, the customary inheritance laws are not completely followed by the Indigenous communities. Which is why certain substantial changes are found among some educated and equity conscious Indigenous families of the CHT in terms of allowing daughter and widows to have access to property. Therefore, it is clear that most of Indigenous communities follow the patriarchal structure and women posit the lower status in this aspect though a little change is noticeable in contemporary times.

5. Women in the Gendered Traditional Administrative Structure: Male Domination

In both Indigenous and State's socio-political structures, Indigenous women are often excluded from the role of administrative and political leadership. Participation of Indigenous women in these traditional institutions of the country is very little and limited.

Based on the *CHT Regulation 1900*, popularly known as the CHT Manual, the CHT administration was stratified into three circles named the Chakma, the Bohmang and the Mong each of which is administrated by a *Raja*, the responsible person to adjudicate the issues of social justice, land and natural resource management, and maintenance of law and order. Under this regime, the *Headmen* (*mouza* chief) and *Krbaris* (village chief) are subsequently responsible to maintain peace and order at the village level. According to the hereditary traditional power structure, the Headman is usually a male. So are the *Karbaries*. There are 369 Headmen of 369 *mouzas* in three circles and approximately 3,500 *Karbaris* in three hill districts of the CHT. However, out of them, around two dozens of Headmen are female. This picture demonstrates

how disproportionately hill Indigenous women are represented even in the traditional leadership. They are not allowed to hold positions of Headman, *Karbari* or Circle Chief, as these are usually transferred from father to son. Only in exceptional cases, Indigenous women are seen as acting Chief (a Chakma Chief in the mid 19th century and a Mong Chief in the 1980s). It is learnt that recently Chakma Raja Barrister Devasish Roy appointed around hundred women as *Karbari*.

Generally, the *Karbaris* resolve conflicts within a village. If they fail to do so, the cases are usually taken to the Headmen. In both cases, the disputes are discussed openly with male village elders acting as advisors to the *Karbaries* and Headmen. In this system, the Circle Chief is the final arbiter of justice. Indigenous women are also seldom consulted in political matters concerning the community, and far less involved in central decision-making level. Even women who have freed themselves from traditional restriction at the family level are not yet in a position to either become a traditional leader or to be otherwise represented in the local power structure. Indigenous women's marginal presence in traditional and local power structures is noticeable, especially in *shalish* board of the plains encountering various forms of social and marital problems. In the CHT, the traditional courts, which are administrated by the Headmen and Chiefs try to respect Indigenous women's rights compared to the plains. Some case studies on separation, divorce and child custody documented in the court of Chakma Chief demonstrate that women were properly compensated (Chakma, M 2010, pp. 43-46).

Similar to the CHT, the traditional leadership as well as social system has been running without any female representatives in the key positions of the traditional institutions in the plains. The Indigenous women from the plains are hardly represented in traditional institutions. Even the matrilineal Khasi and Garo community are no exceptions. The majority of the *Montri* (traditional head of a 'Punji' or village) in Khasi and *Nokhma* (traditional head of a village) in Garo community are male (Chakrabarty and Sarkar 2014, p. 102). Even in the border areas in the northwest region (Rajshahi-Dinajpur), particularly the traditional institutions of the Santal community, such as, *Pargana*, *Manjhi* and *La'bir* have been running without female representative.

Such phenomenon marks gender bias in the traditional justice system. The above-mentioned discussion underpins gender biasness in the administrative institutions and justice system among the Indigenous communities that impose subordinate status of women.

6. Access to Health Care and Education: Deprivation and Fight for Equity and Equality

Indigenous women have limited access to health care facilities and education in Bangladesh. It is notable that there is very limited disaggregated health and

education data on Indigenous peoples in Bangladesh. However, several studies conducted by international organizations reveal that the CHT has the highest number of underweight new-born babies (Dentith and Mihlar 2013, p. 129). Such trend indicates not only poor health status of children, but also poor maternal health and lack of proper antenatal as well as lower access to health care services in the region. In addition to this, Humanitarian News and Analysis (IRIN) (cited in Kapaeeng Foundation 2011, pp. 47-48) reported that the CHT has the worst healthcare facilities in Bangladesh. Moreover, there is lack of sufficient clinics, efficient health workers and medical facilities at both district and sub-district level in the CHT. According to the Bureau of Statistics and United Nations Children's Fund (UNICEF), the three hill districts in the CHT are still listed among the least performing districts in Bangladesh in terms of Millennium Development Goals (cited in Kapaeeng Foundation 2011, p.49). In addition, UNFPA's (cited in United Nations Development Program-Chittagong Hill Tracts Development Facility 2010) study affirms that maternal mortality among indigenous peoples in Bangladesh is 4.71 per live births. It can be assumed from these reports that Indigenous women have limited access to health care services.

Lack of education is one of the major hindrances for the knowledge on health care services , as girls and women play the key role in the nurturance of children. It is to note that there is dearth of records on education and literacy rate of Indigenous peoples in Bangladesh. Nonetheless, it seems that Indigenous women in the CHT and the plains have limited access to education. In recent years, the government is taking initiatives in partnership with transnational organizations to provide primary education to female students in multilingual curriculum (UNICEF n.d. p. 11). The majority of Indigenous students irrespective of sex have limited access to education, more precisely in the remote rural areas as there is lack of competent teachers and poor school facilities (Asian Indigenous and Tribal Peoples Network 2003; Kundu et al. 2011, p. 22). Indigenous women in the plains have less access to education. A significant number of Indigenous women and girls in the plains only know how to write their names. A study by Chakrabarty and Sarkar (2014, p. 71) reveals that only a small number of girls among Garo, Oraon, Koch and Santal communities have access to high school education. The study also finds that early marriage, social expectation of gender, the distance between schools and habitation, limited or no facility of education in mother tongue and poverty curbs women's participation in education. Thus, lack of substantial information on Indigenous women's access to health care and education and limited government's attention leads to postulating a long term deprivation of Indigenous women in education and health service.

7. Indigenous Women in the Political Sphere: Platform to Raise Voice

Although Indigenous women in Bangladesh do not have significant representation in the national political domain, they play important role at grassroots level politics, especially in the CHT. During the insurgency period, the Hill Women's Federation and Parbatya Chattagram Mohila Samiti (CHT Women's Association) were vocal against the military occupation and violence against Indigenous women (Tebtebba Foundation cited in Roy, D 2012, p. 103). The armed struggle in the CHT led by the PCJSS during insurgency has led to intense politicization of Indigenous *Jumma* women. They have been associated with the political struggle for the emancipation and autonomy of Indigenous *Jumma* people from the very beginning as mentioned before. A group of members of this organization even received high profile arms training in 1970s (Halim 2010, p. 183). The Hill Women's Federation (HWF), which was formed on 8 March 1988, also played a crucial role in the movement of the *Jumma* people. They took up cases of rape of the *Jumma* women perpetrated by the military and security personnel, and Bengali settlers and brought them to the public forums. At present, the PCMS and HWF are continuing movement for emancipation of women in particular and for the rights to self-determination of Indigenous *Jumma* people in general. Alongside these women's organizations, many Indigenous hill women are active in the regional political parties and to some extent in the mainstream political parties. However, again their representation is quite limited and in some cases 'tokenistic' in these political organizations.

In the plains, Adivasi Nari Parishad in Rajshahi, Achik Michik Association and Abima Michik Association in Mymensingh, Adivasi Nari Unnayan Sangathan in greater Sylhet have been working for the causes of the Indigenous women. Some of these organizations are political in nature. However, the leadership of these organizations is weak and lack capacity. This is because there may be lack of motivation or lack of proper guidance and leadership among Indigenous women themselves. Furthermore, insecurity plays a major role behind this. Besides, a number of Indigenous women in the plains are also involved in Indigenous peoples organizations like Bangladesh Indigenous Peoples Forum and Jatiya Adivasi Parsihad (National Indigenous Council). Though women's representation in Indigenous peoples' organizations is ensured, these organizations remain largely male-dominated. While number of women is less than that of their male counterparts, and most of the key positions in these organisations are held by men.

In a national conference of Indigenous women organised by Kapaeeng Foundation on 1 April 2012, in Dhaka, a national network named Bangladesh Indigenous Women Network (BIWN) was formed aiming at strengthening network and solidarity among the Indigenous women's organisations, activists and organisers working in Bangladesh and toughening united struggle of

Indigenous women against all kinds of oppression over the Indigenous women in the country. Despite male domination in the society and contrarily lack of capacity of Indigenous women, the BIWN is, among others, working for capacity building of Indigenous women's organisations, activists and organisers.

The CHT Accord tends to reflect gender biasness as there was no women representative in the peace dialogues prior to signing of the CHT Accord (Mohsin 2004, p. 52). Moreover, according to the CHT Accord, three out of 34 members in each of the three Hill District Councils (HDCs) and three out of 22 members of CHT Regional Council (CHTRC) are reserved for women. Though the women have right to compete for other general seats in both CHTRC and three HDCs, but in the interim CHT Regional Council (CHTRC), no single woman was nominated for general seats except the seats reserved for them. While in the case of interim Hill District Councils (HDCs), only one of the five members including chairman of Rangamati HDC is a woman. It is to be noted that the integration of women's role in decision-making is yet to be realized in both the CHTRC and the HDCs.

As per the Constitution of Bangladesh, 45 out of the 345 seats in the national parliament are reserved for women, but there is no separate reservation for Indigenous women. For Indigenous women, getting nomination for the reserved seats in the national parliament depends mainly on political favour. However, there were only two nominated women MPs (Member of Parliament) prior to the signing of the CHT Accord in 1997. The last grand alliance government appointed an Indigenous woman MP from Cox's Bazaar region. At present, there is no Indigenous woman MP in the current parliamentary setting. Moreover, the government's policy refuses to provide any reserve seats for Indigenous women in local government bodies such as Upazila Parishad, Union Parishad and Poursava. In 1997, the law for direct election in the reserved seats for women members in the local government bodies was enacted. But there was no separate reservation for Indigenous women. Such systemic lack of representation of Indigenous women at all levels of local government bodies denies their right to make their issues and concerns heard at the government's decision-making level. Lack of political advocates for Indigenous women undoubtedly makes it more difficult to bring national attention to the societal problem of violence against women, as well as to build focused political will to find solutions to the problem and improve their social position (Chakma, B 2013).

During 4th Upazila Elections in 2014, one Indigenous woman candidate was elected as a chairman in the CHT. In addition, 20 female vice chairman positions of which 17 in the CHT and three in the plains were also filled by Indigenous peoples. Of the 17 winning seats held by Indigenous women in the CHT, nine were won by Chakma and five by Marma candidates while the remaining three

were won by Tripura, Tanchangya and Bawm communities. Besides, the three winning position in the plains were held by a Monipuri, a Santal and a Rajowar. Of the 17 winning female vice chairman in the CHT, 15 of them were supported by Indigenous peoples' political parties while the remaining two vice chairman were supported by national level mainstream political parties. The three winning female vice chairmen in the plains were supported by mainstream political parties as Indigenous peoples in the plains do not have any political party of their own (Kapaeeng Foundation 2014).

It is now visible that Indigenous women are coming forward to voice for their rights both in the CHT and the plains. Although they have limited representation in the national politics at grassroots level, there is still long way to go for equality and justice for Indigenous peoples in the country.

8. Traditional Economic Activities vs. Transformation of Occupation

The Indigenous women play substantial role in traditional economy both directly and indirectly for the greater welfare of the society, culture and continuation of Indigenous knowledge. Indigenous women through their traditional role as the de facto managers of the rural households are involved in the entire household and outside activities without almost any recognized control over any resources. They undertake almost all the household chores, child rearing and looking after of elders in the family. Furthermore, Indigenous women are often considered as the custodians of culture and tradition as they weave traditional attire and possess ecological knowledge and skills to make herbal medicine from trees and plants for the cure of illness. The chief means of Indigenous economy is forest, land, and agriculture, in which Indigenous women play a crucial role. Women in Indigenous society bear the brunt of the work such as hoeing, transplanting and weeding. They play an essential role in the management of resources including water, forest and energy. Despite the fact that Indigenous women have important role in production, their contribution remains invisible within their society and in the mainstream economy. Many Indigenous women who work as wage labourer encounter gendered wage discrimination (Chakma, M 2010, p. 56). However, due to the multidimensional factors associated with globalization indigenous women both in the CHT and the plains are being compelled to take alternative livelihood options and to some extent migration to urban areas. As a result, practices of traditional economic activities are decreasing. Indigenous women who work as labourers and agricultural workers in the greater North Bengal face physical and verbal harassment if they seek payment on due time (Chakrabarty 1988, p.69).

In the CHT government sponsored transmigration program and development interventions forced *Jumma* women to move away from their ancestral lands

and leave their traditional economic activities which resulted feminization of poverty and involvement into alternative or non-traditional occupations (Chapola 2009, p.29; Halim cited in Wazed 2012, p. 46). At the same time, the other factors for changing traditional occupations are population growth, pressure over land, impact of modernization and marketization, and spread of formal education. However, nowadays a small number of Indigenous women have undertaken occupations in the formal job sectors like teaching, development organizations like NGOs, horticulture, animal husbandry, poultry (Roy, D 2000, pp. 87-97,101-108), garments and EPZs.

Likewise, development programs and projects adversely affect the regular livelihood activities of Indigenous women. In most cases such initiatives in the name of development and modernization hinder not only their daily activities but also traditional practices which are intrinsically associated with their knowledge and culture as mentioned earlier. The Kaptai Hydroelectric Project was put into operation in 1960 which submerged 40 percent of the most productive arable land and displaced 100,000 people. Therefore, many Indigenous women became victims of internal and external displacement as the then government did not provide sufficient compensation to the affected families. The changed situation compelled them to collect water from distance places (Nasrin and Togawa 2010, p. 94; Chakma, K 2011, p. 3).

Simultaneously, numerous development projects in the name of national/eco parks development and reserve forest commercialization in the plains delimited women's access to natural resources and contain severe ecological impact (Chakraborty and Sarkar 2014, p.59) as well as reinforced Indigenous women to look for alternative occupations.

Indigenous women are one of the prime victims of environmental degradation. Deforestation affects Indigenous women more than Indigenous men because of women's primary responsibilities. Traditionally Indigenous people had access to Village Common Forest (VCF) and other forests and natural resources, which cater to the basic biomass, wood-fuel and medicinal plant needs of the local villagers. However, Indigenous people are losing control over traditional use of their lands and forests. Many forestlands have been transformed into agricultural lands or into homesteads due to a variety of factors. Thus, access to these VCFs are being reduced day by day and having detrimental impacts on the Indigenous women's livelihood and the normal biodiversity of the forests and hills (Dhali 2009, p.244).

Despite multidimensional factors associated with globalization as well as development interventions, Indigenous women have been able to maintain their traditional economic activities like handloom weaving although in a small scale both from individual and collective efforts as part of avenue to persist

indigenous traditions. Handloom weaving is still prevalent among some Indigenous communities in both the CHT and the plains. For example, a number of Manipuri women provide financial assistance to their families by selling traditional looms (Kasem and Morad 2008, pp. 80-83).

9. Way Forward

To sum up, it can be said that Indigenous women in Bangladesh, both in the plains and in the CHT, confront multiple forms of discrimination within and in the broader society. The state policies in the country do not concretely focus on the needs and interests of the Indigenous women, instead these are likely to trivialize the identities of Indigenous culture and traditions. In-migration of Bengali settlers in the Indigenous habituated localities, militarization and land grabbing result in violence against Indigenous women. Also, women's unequal access to social, administrative, political and economic ladder indicates the subordinate status of ethnic women in Bangladesh. Women have limited access to and knowledge about health care and education facilities both in the plains and the CHT and there is a dearth of disaggregated data on Indigenous peoples' education and health. In addition to this, numerous development interventions and degradation of environment as well as loss of biodiversity impel women to change their traditional economic activities closely attached to their traditions and cultures. Despite diverse influencing factors indigenous women have been able to pertain certain traditional economic activities to some degree and are coming forth to voice for their equal rights at national and international platform.

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Photo : Jitit Chakma

CHAPTER-VII

Breaking the Silence: Situation of Indigenous Children in Bangladesh

Bablu Chakma* and Manik Soren*

1. Introduction

The history of Indigenous peoples in Bangladesh is interwoven with oppression, discrimination and disregard. For long, they have been victims of different forms of human rights violations perpetrated by the ruling elites, corporations, and other actors of the country. Violations of individual as well as collective rights of Indigenous peoples have now turned into everyday phenomena. In such human rights violations Indigenous children fall among the most vulnerable groups. Their rights enshrined in the *United Nations Convention on the Rights of the Child* (UNCRC) and in other international human rights instruments are routinely violated, remain unimplemented and frequently ignored to the extent not often experienced by their Bengali counterparts in the country. Unlike their ‘mainstream’ counterparts, the offspring of dominant majority Bengali population in the country, Indigenous children’s sufferings are multiple. Their rights are violated not only for being children, one of the most vulnerable sections in the society in general, but also because of their *indigeneity* (Kapaeeng 2014, 183). Their *indigeneity*, given the dire situations of Indigenous peoples in Bangladesh, contributes to their vulnerability as well very significantly. Furthermore, they suffer from multiple forms of discrimination also because of the (poor) economic class they belong to, (backward) geographic location they reside in, and distinct language they speak in. Given the extreme vulnerability that the Indigenous children are facing with, their issues were supposed to be in the forefront among the prime issues of discussion of the country. However, the reality is far from that. The issues of Indigenous children always occupy the backseat in the discussions and often are overlooked – even by the Indigenous peoples, let alone by non-Indigenous peoples of the country. Besides, while formulating and implementing policies, the State puts their issues either at the bottom of the list of priorities or do not include them at all.

Since the issues facing Indigenous children are some of the least prioritized and discussed about issues, giving a clear picture about the current state of human rights of Indigenous girl and boy children in Bangladesh is problematic. There is a dearth of studies and segregated data on the issues of Indigenous children

in the country. Hence, comprehensive studies need to be carried out to explore and locate the human rights issues facing Indigenous children in Bangladesh. This chapter basically aims at providing a brief overview of the major human rights issues facing Indigenous children at present. The discussion in the chapter includes two major parts. First part analyses the legal and policy framework at the national and international levels for the rights of Indigenous children. And the second part of the chapter discusses major human rights issues Indigenous children in Bangladesh are facing with – education, violence affecting community as a whole, violence against Indigenous girls, and child labour.

This essay argues that while the human rights issues of indigenous children were supposed to be priority issues on the table of discussion, formulation and implementation of policies and a clear picture about their current state of human rights is unavailable. The dearth of data and studies on the issues of Indigenous children in Bangladesh contribute to this situation significantly. The following analysis strives to initiate a discussion in order to fulfil the huge gap that prevails in the realm of literature and to serve the purpose of promoting effective advocacy towards the protection of human rights of Indigenous children in the country.

2. Legal and Policy Frameworks

It is now generally accepted that human rights, often expressed and guaranteed by laws, standards, and norms, are interrelated and interdependent. Therefore, while discussing about the rights of a particular group, one needs to consider the rights that are enshrined in the relevant laws. So, to see how the rights of Indigenous children in Bangladesh are ensured, one needs to look at the international and domestic laws, policies, and standards that are relevant for them.

2.1 International Frameworks

Bangladesh, as a member state of the UN, has ratified and acceded to almost all the major international human rights treaties. All these treaties cover civil, political, economic, social, and cultural rights of all peoples. Hence they cover the rights of Indigenous peoples including Indigenous children in Bangladesh as well. The pledges made through these treaties manifest the positive attitude of the State towards the protection and promotion of the human rights of the citizens of the country, but implementation of these treaties still remains questionable.

Aside from these treaties, Bangladesh ratified the *International Labour Organization Convention on Indigenous and Tribal Population 107* (ILO C107) in 1972 that specifically enshrines the rights of Indigenous peoples in the country. The ILO C107 was revised and another convention named *Indigenous and Tribal*

Peoples Convention No. 169 (ILO C169) was adopted in 1989. Despite repeated assertion by Indigenous peoples in the country, Bangladesh is yet to ratify this Convention. However, the lack of ratification of this treaty cannot be a hindrance in regards to implementation of the principles of the Convention because the provisions of the Convention are reflected in the policies of different multilateral and bilateral agencies with which Bangladesh has been working for a long time (ILO 2007, 11). Both of these Conventions have provisions for Indigenous children along with the provisions that are applicable for Indigenous peoples in general. Article 23 and Article 28 of ILO C107 and ILO C169 respectively put emphasis on the rights of ensuring education for Indigenous children in their own mother tongue, and undertaking measures to preserve the languages of Indigenous peoples (which also ultimately focuses on the rights of Indigenous children).

Furthermore, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), now being considered as the corner-stone of the rights of Indigenous peoples, explicitly mentions about different rights of Indigenous children. In its annex, as the UNDRIP clearly mentions about its emphasis on children rights: “the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children...” In its Article 7, 14, 17, 21, and 22, the declaration covers different areas of the rights of Indigenous children including education; non-discrimination; protection from economic exploitation and hazardous work; protection from violence; health or physical, mental, spiritual, moral or social development; labour and special initiatives for Indigenous children. Bangladesh, however, abstained from voting in favour of this important instrument (UNDRIP) while it was being adopted in 2007. It has neither provided its support in the later periods. Implementation of this declaration remains a prime demand of Indigenous peoples in Bangladesh for the promotion and protection of their rights including those of Indigenous children.

All the above-mentioned instruments complement the UNCRC, a more comprehensive and holistic set of rights of all children including Indigenous children. This Convention includes issues such as education, health, language, culture, protection, disability, care etc. affecting children around the world. This Convention contains provisions specifically on Indigenous children. In fact paragraph 1 of General Comments (No. 11) on Indigenous children by the UNCRC states that this Convention is the first core human rights treaty that provides specific reference to Indigenous children. It mentions about addressing the needs of language of Indigenous children in the mass media [Article 17(d)] and respect for the respective cultures, languages and beliefs they belong to (Article 30). It also contains provisions on issues like non-discrimination (Article 2), which can also be said to be specifically applicable to Indigenous children. And the Article 30 also requires that the

Indigenous children “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 practise his or her own religion.” Through its articles, the UNCRC provides with a strong basis for the formulation of domestic laws in countries that have ratified this treaty. Bangladesh ratified this treaty in 1990 just after one year of its adoption by the UN General Assembly. The ratification of the UNCRC remains a very significant milestone for the rights of the children including Indigenous children in the country.

2.2 Domestic Legal Frameworks

Ever since it was born in 1971, Bangladesh seems to have been an advocate for the child rights. As the *Constitution of Bangladesh*, the supreme law of the country, states: “nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens” [Article 28](4)]. Besides, Bangladesh formulated the *Children Act 1974* and the *Children Rules 1976*. Though these two important documents used to be considered very progressive in nature, they were criticized for their inconformity with the international laws and standards for which children used to suffer instead (Shamim 2013). In regards to the definition of the child and the minimum age for criminal responsibility the *Children Act 1974* suffered from some limitations (ASK 2012, 10). It defines children as the persons bellow the age of 16 whereas UNCRC regards children as the persons bellow 18. Moreover, the existing laws and policies were claimed to be unsuccessful in providing proper protection and for creating adequate room for the development of children in the country (Kapaeeng 2014, 195). In order to overcoming the limitations of the previous legislations and bringing them in line with the UNCRC, the *Children Act 2013* was enacted. Many welcomed the formulation of this law. It is claimed that the protection of the rights of the child has ushered into a new era where the rights of all spheres of the children in Bangladesh are covered (Shamim 2013). It covers a wide range of issues facing children including Indigenous children in the country. A remarkable development brought about by this law is it has confirmed the minimum age for the children bellow 18 in line with international standards. The *Children Act 2013* also speaks about, inter alia, constitution of National Child Welfare Board, protection of child victims and witnesses, establishment of child help desks in the police station, measures for wellbeing of the children, child-friendly arrest procedure, alternative preventive measures, responsibility of media, provision of sentence for the perpetrators, and juvenile court at the district level.

Being a comprehensive law, covering major issues facing children in the country, it can be expected that this law would significantly contribute to the development of human rights situations of Indigenous children as well. Having said that, the history of the legal justice system in Bangladesh reminds that

presence of a powerful law is not enough to serve the purpose for which it has been made – proper enforcement of it remains the main question. So, proper enforcement of the *Children Act of 2013* remains to be seen in the days to come. Besides, the law may face challenges in terms of its implementation as many of the existing rules, customs, and practices within the society and state apparatus, which are not ‘friendly’ towards the rights of children, may create problem (Kapaeeng 2014, 196). The challenge for Indigenous children is even higher because of their distinctive adverse reality they face as a part and parcel of Indigenous peoples. It is noteworthy that the status of enjoyment of rights of Indigenous children is closely linked to that of the Indigenous groups as a whole (AITPN 2003, 3). Moreover, the word ‘Indigenous’ does not appear in the entire law i.e. none of its articles of the Act clearly mentions about Indigenous children in the country.

Also, there are some other existing laws that supplement the *Children Act 2013* in regards to protection and promotion of the rights of children in the country. Examples of such laws are the *Domestic Violence (Prevention and Protection) Act 2010*, the *Anti Trafficking Act 2011*, the *Child Labour Elimination Policy 2010*, the *Women and Child Repression Prevention (Amendment) Act 2003*, the *Primary Education Act 1990*, and the *Labour Act 2006*. Another notable development in the regime of human rights including the rights of the children in the country is formation of the National Human Rights Commission (NHRC) in 2010. The NHRC has formed a Child Rights Committee and is playing an active role in promoting child rights (ASK 2012, 11). All these laws, policies and institutions, however, only partially address the issues of Indigenous children. Indigenous children, who experience a reality different from the Bengali children, need specific provisions for them in these laws. Besides, though there are provisions for Indigenous children in the *National Education Policy 2010*, the *National Poverty Reduction Strategy Unlocking the Potential*, and the *CHT Accord* and its related laws, they are chiefly limited to the issues related to the right of education. Therefore, there is a pressing need for a law that covers the major issues of Indigenous peoples, with specific importance for vulnerable groups including children, women and people with disability. In fact, Indigenous peoples in Bangladesh are now voicing for enactment of the *Indigenous Peoples Rights Act* and formation of the *Indigenous Peoples Commission* in order to take care of Indigenous peoples’ issues and rights (Coalition 2013, 17). If implemented, it would certainly be a breakthrough for Indigenous children in Bangladesh.

3. Current State of Human Rights of Indigenous Children

Although Bangladesh is a signatory to many of the international treaties and has many existing legislations and policies covering many areas of human rights of Indigenous children, their overall situation is far from satisfactory. The

ratification and enactment of laws remain largely on paper and their implementation for the protection and physical-mental-moral development of Indigenous children carries a big question mark. As a result, human rights of Indigenous children enshrined in the international-national human rights framework get routinely violated, which turned Indigenous children into one of the most vulnerable sections among whole national community. Some of the major human rights issues Indigenous peoples are concerned about are education, violence affecting community as a whole, violence against girls, and child labour.

3.1 Education

For long, the international community has regarded free primary education as a fundamental right for children around the world. It has been well reflected in the Article 26 of the *Universal Declaration of Human Rights* (UDHR). The focus on universal primary education has maintained its position in different international instruments (ILO, UNICEF & UNESCO 2009, 10). In Bangladesh too, successful initiatives can be seen in regards to universal primary education. According to the 2007 School Survey Report (ILO, UNICEF & UNESCO 2009, 10), the Gross Enrolment Rate (GER) was as high as 98.8% and the Net Enrolment Rate (NER) was 91.1%. And according to Ahmed et al (cited in ILO 2007, 10), the NER and GER at primary level were approximately 89% and 101.7% respectively. However, the high dropout rate at both primary and secondary education remains a matter of concern. However, if the state of education of Indigenous children is looked at, it is different from the overall national situation – Indigenous children perform poorly than non-Indigenous children in terms of enrolment rates, years of education and number of graduates. The percentage of Indigenous children is less in all these three indicators (First Nations 2006, 7). A report by Asian Development Bank (2001, cited in Tripura 2008) shows that while the enrolment rate in Bangladesh was 86.6%, the enrolment rate of Indigenous children in the CHT, an Indigenous inhabited region, was only 56.8%. Besides, the dropout rate of the enrolled students in schools at the early primary level was 59%, a rate twice as much as the national dropout rate (*The Daily Prothom Alo*, September 30, 2012). The state of Indigenous children in the plains in this regard is presumably similar to that of the CHT.

There are a myriad of reasons that are responsible for this situation. According to an AIPP (2007, 19) study, the followings are some of the main reasons behind the high dropout rate of Indigenous children in this schools of Bangladesh: “language barrier, acute poverty, non-synchronisation of the school calendar to work seasons like the *Jum* season, long distance of schools from the village households, lack of awareness among guardians.” While reasons like poverty, lack of awareness, and work season affect children in the country as a whole,

there are other exclusive causes too that affect Indigenous children. The language barrier gives rise to a major problem. There are above 30 Indigenous languages in the country (Chakma 2014, 124). Indigenous children who come from these language groups often fall in trouble while communicating and studying because the languages being used at regular educational institutions (except for the religious schools) are either Bengali or English. Having had to learn in a language which is not a vernacular of their own eventually demotivates Indigenous children that results in high dropout rate.

Another big reason behind the poor performance of Indigenous children is that the quality of education, they received, is not up to the mark. The problems include lack of qualified teachers and essential educational materials, poor infrastructure, oversized classes, and sub-standard facilities (First Nations 2006, 7). There are even no primary schools in many remote areas inhabited by Indigenous peoples. Even if schools are there, many Indigenous children have to travel miles to reach (and come back from) the school. A study conducted by Halim (cited in AIPP 2007, 19) shows that the nearest primary, secondary and higher secondary schools in Indigenous inhabited CHT are located 2.5, 5.7 and 16.3 miles away respectively from the Indigenous villages. There are over seven thousand Indigenous children who live far away from the vicinity of education centres in Bandarban, a district with widest ethnic diversity in the country (*The Daily Prothom Alo*, September 30, 2012). Lack of understanding on the part of the policy makers hinders the situation from improving. Due to the same reason, the nationalisation process (i.e. to bring primary schools under the direct government management) of 228 primary schools in the CHT has become uncertain (*New Age*, March 1, 2014). Furthermore, other infrastructural facilities are also very poor in the Indigenous inhabited areas. For example, in Bandarban, though five residential hostels were built in 2011 to provide primary education to more than 500 Indigenous children, the hostels are yet to function due to lack of fund as well as reluctance of the concerned government department (Kapaeng 2014, 197). Given the significant differences between the plains and the CHT in terms of geography and demography, the situation of Indigenous children in the plains is a little different in this regard. However, the situation of indigenous children in the plains too is not satisfactory either, as many of them living in the far-flung areas, suffer from similar problems as their CHT's counterpart do.

In addition, it is claimed that education can be used as a means of forced assimilation (First Nations 2006, 7). Although the applicability of this argument needs validation in the context of Bangladesh, some elements of strategies of assimilation using education like “failing to teach Indigenous languages, a lack of community input and control, neglect or denigration of Indigenous knowledge and culture, and discrimination by teachers and other students”, mentioned in the report by First Nations (2006, 7), are active in the country.

How education can act as a trap was also seen in two incidents occurred in 2013. In the first incident, it was seen that groups of Indigenous children, who belong to religions other than Islam, were rescued while they were being taken to Madrassas with the motive to convert them into Muslims (Kapaeeng 2014, 191-193). And in another incident it was found out that a group of Indigenous children, who were rescued by police from Madrassa, were already converted into Muslims (Kapaeeng 2014, 191-193). In both the incidents, the guardians of the children were lured by the perpetrators that their kids would be admitted to good residential schools and be provided with good education (Kapaeeng 2014, 191-193).

It is generally accepted that children learn better in their mother tongue and they need their education in mother tongue in order that they given a strong foundation for future education. In the absence of mother tongue-based primary education and a congenial learning environment, the performance by indigenous children in the later stages of education turns to be unsatisfactory one. A workshop findings show that the rates of graduation in the secondary, higher secondary and undergraduate level of the Indigenous students in the northern districts of Bangladesh are 5.48%, 2.68% and 0.20% respectively (*The Daily Prothom Alo*, July 21, 2014). For this reason, a mother tongue-based multilingual education system is required for Indigenous children. Major international human rights instruments like ILO C169 and ILO C107 also put emphasis on providing multilingual education to Indigenous children. Similar emphasis can also be found in some laws and policies in the country level. For example, the *National Poverty Reduction Strategy Unlocking the Potential – National Strategy for Accelerated Poverty Reduction* and the *CHT Accord of 1997* (and its related laws) clearly state about undertaking measures for primary education for Indigenous children in the country. Also very importantly, the *National Education Policy of 2010* (page 11) clearly states:

- Measures will be taken to ensure the availability of teachers from ethnic groups and to prepare texts in their own languages so that ethnic children can learn their own Indigenous languages. In these initiatives, especially in preparing textbooks the inclusion of respective Indigenous communities will be ensured
- Special assistance will be provided to the marginalized Indigenous children.

The Ministry of Primary and Mass Education came up with some initiatives in 2013 to start primary education for Indigenous children in their respective mother tongue. As a part of it, a national committee was formed to take care of production of the textbooks, training of teachers, and other related programs for six Indigenous languages – Chakma, Kakbarak, Mandi, Marma, Santali and Sadri (Sathi 2014). Initiatives undertaken by the government were supposed to

be a breakthrough and a source of hope and inspiration for Indigenous peoples. Ironically, however, no further action could be seen as of now following the formation of the national committee. So a deadlock persists with regard to the execution of the proposed program. It is to be noted that implementation remains the bottom line to change the present situation. On the other hand, the government is yet to take initiative to this end for children from smaller Indigenous groups who are more vulnerable than children from larger groups (Chakma 2014, 127). It is expected that State, in order that children of smaller indigenous groups are benefited, would come up with initiatives similar to the one already undertaken for the children of the larger Indigenous groups.

3.2 Violence Affecting Community as a Whole

Children, regardless of their origin, and at the growing up stage,, generally need protection. However, it appears that the status of vulnerability and protection of Indigenous children in the country is worse than their other counterparts because of the nature of vulnerabilities exclusively faced by Indigenous peoples. It is undeniable that the situation of Indigenous children is intertwined with the situations of Indigenous peoples in general. It is a common sight in Bangladesh that Indigenous peoples are victims of different forms of human rights violations – that may range from sheer discrimination to as brutal as massacre. While systematic discrimination of Indigenous peoples in Bangladesh has been an inseparable part of their lives, ever since the liberation of Bangladesh in 1971, Indigenous peoples across the country have reportedly experienced more than a dozen brutal massacres when hundreds of Indigenous peoples including children were killed, injured, and suffered otherwise (Larma 2003, 4-5). Such incidents of violence continue till today pitching their lives in general into dire situations and eventually leaving them insecure, and destitute. But it turns into a matter of grave concern when occurrence of such incidents is very frequent and endemic. As for instance, there were reportedly 8, 9, and 10 communal attacks carried out on Indigenous peoples both in the CHT and the plains in 2011, 2012, and 2013 respectively (Kapaeeng 2012, 2013, 2014).

It is apparent that due to such incidents, the situations of Indigenous children would be really dreadful given that the situations of their adults, who are supposed to play the role of their children's protector, are at risk. In an incident of communal attack on Indigenous peoples in Taindong of Khagrachari on 19 June 2013 where about 4,500 Indigenous Jumma villagers were affected (Kapaeeng 2014, 148-153), Ashamoni Chakma, a two-month old child with critical health condition, died of lack of medical attention which could not be reached due to this communal attack (Kapaeeng 2013, 50). Along with Ashamoni, many other Indigenous children were also victims of this mayhem, as could be seen later from the disturbing reports that appeared in social and mass media. Despite the fact that a grave situation prevails as the community

continues to get affected, the Indigenous children's issues are often generalized with that of the adults and do not get focus as a separate area that need to be prioritized.

3.3 Violence Against Girls

While Indigenous children in general experience multiple forms of oppression due to their multifaceted identity, the vulnerability of girl children in the country seem even a level higher due to their gender. In particular, the current situation of violence against Indigenous girls and women appears to be at a very alarming stage. Reports coming one after another in mass media and elsewhere (reports disseminated by CSOs etc.) signal to disturbing and mounting incidents of violence against Indigenous girls and Indigenous women. A report by Kapaeeng Foundation (2014, 155-156) shows that in 2013 there were 67 reported incidents of violence against Indigenous women and girls in Bangladesh. Out of this, 69% of the victims were girl children. Another report shows that from January-April 2014 there were 10 incidents of violence against the CHT Indigenous girls, out of a total of 19 such incidents against Indigenous women and girls in Bangladesh (Kapaeeng and BIWN 2014).

Given such circumstances, concerned authorities in the country were supposed to undertake actions against the alleged perpetrators to curb the rate of such incidents. However, the reality is far from being acceptable in this regard. From what we observe of the human rights situations of the Indigenous peoples in the country, it is apparent that the number of incidents of violence against Indigenous women and girls continue to rise with the passage of time. The number of reported incidents of violence against Indigenous women and girls in 2010 was 25, which went up to 75 and 67 in 2012 and 2013 respectively (Kapaeeng 2014, 155). Apparently, a culture of impunity has been the single most crucial factor that is contributing to the current situation of violence against Indigenous women and girls (D'Costa 2014, 31).

3.4 Child Labour

Last but not the least critical issue facing Indigenous children in Bangladesh is child labour. This is yet another sector which remains off the table of discussion. Not much can be known about the situations of Indigenous labour, let alone about that of Indigenous children. A critical observation of the situation of Indigenous children indicates that it is a very crucial area that is often overlooked. An ILO report quotes a staff of the Programme on the Elimination of Child Labour (ILO 2007, 3): "we fight the Worst Forms of Child Labour and often end up finding Indigenous children." Therefore, Indigenous child labour in the country invokes it to be given priority along with other issues of Indigenous peoples in the country.

Indigenous child labour is of two types: industrial labour and domestic labour. Since there is not much industrialization in most Indigenous-inhabited areas, majority of the Indigenous workers are concentrated in industrial areas like Export Processing Zones (EPZ) and beauty parlours situated in or around big cities. And a good portion of the labour force of these industries is child labour. Bivash Chakma claims that despite different efforts from the government and non-government agencies to eliminate child labour, it exists; and about 20% out of 12-15 thousand Indigenous workers working in Savar EPZ, a massive industrial zone, are children¹. Besides, a study conducted by Garo Indigenous Michik Association shows that most of the beauty parlour workers start at their early age. It also finds that 31% of the beauty parlour workers are below 18 years of age (Drong 2006, 10).

Another form of labour where Indigenous children are engaged is domestic labour. It is a general practice among many Indigenous families with relatively good financial position to hire 'domestic help' - a majority of them are Indigenous children (Kapaeeng 2014, 189). They are employed to do household activities like cooking, housekeeping, baby-sitting, and so on. Despite a major part of Indigenous child labour is composed of domestic labour, this part remains an unexplored sector. In the country as a whole, UNICEF (cited in ASK 2012, 17) sources show that: "about half a million children, three quarters of whom are girls, work as domestic help which is regarded as the 'hidden sector'. Some 90% of them sleep in the homes of their employers, a large number of whom are paid no wages." Though this picture does not provide a very clear sight of domestic labour of Indigenous children given their distinct social, cultural, economic, and political background, it can be considered as a minor reflection of the situation of domestic labour of Indigenous children in the country. An interview with Jugiong Chakma gives an indication that this area is quietly becoming a matter of concern. Jugiong claims that over 100 girl children from some Indigenous villages of around 2,500 people in Teknaf, Cox's Bazar work as domestic workers in different cities like Dhaka, Chittagong, and Rangamati². The ratio between girl domestic help and overall population in this area is certainly disturbing.

The problem with domestic labour is that it does not remain within labour only, it often couples with other forms of human rights violations including physical and mental torture, sexual harassment, and wage exploitation. In an incident in September 2013, an Indigenous Marma girl, 12, from Naikhyangchari, Bandarban was continuously tortured and harassed for few months by her employer's family members in Dhaka (Kapaeeng 2014, 190). She was rescued

1 Interview with Bivash Chakma (an Indigenous leader who deals with the rights of Indigenous workers in Savar EPZ areas), July 10, 2014.

2 Interview with Jugiong Chakma (an Indigenous person works as a supplier of domestic workers), July 5, 2014.

only after her body was severely burnt because her employer poured boiled water on the victim. But the alleged perpetrator is yet to be brought to justice. It, therefore, can be inferred that there might be numerous such incidents that never get public.

4. Conclusion

We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'Tomorrow,' his name is today (cited in Shamim 2013).

Chile's Nobel Prize winning poet Gabriela Minstral reminds us again that children are not the future of us only rather they are our present. They are at a stage where they need protection, care and room for proper development. However, as it is seen in this paper, the human rights situation of Indigenous children in Bangladesh is appalling and barely gets any attention from the State and other concerned stakeholders. This essay basically tried to give a brief picture of the main human rights issues facing Indigenous children. There are international laws that ensure rights of Indigenous children along with other children. Especially the UNCRC and some Indigenous-specific conventions and declarations specifically mention about the rights of Indigenous children. Fortunately, Bangladesh is a signatory to many of these international treaties and has formulated a good number of laws and policies that partially address rights of Indigenous children. Nevertheless, it has been seen in this essay that despite having different laws, Indigenous children continue to confront some serious human rights issues. One such is education right. The situation of Indigenous children in this area is not at all satisfactory. Indigenous children are lagging behind their mainstream counterparts in regard to enrolment, years of schooling and graduation. It has also been found out in the present analysis that Indigenous children get seriously victimised when the community as a whole are victims of serious human rights violations. And when it comes to an individual, Indigenous girl children tend to be the worst victims. The human rights situation of Indigenous children is much worse in the labour sector. Coupled with these issues is the serious lack of studies and segregated data which hide the extent of oppression, discrimination, and subjugation faced by Indigenous children. Therefore, different relevant stakeholders including government, academics, rights activists, and Indigenous people themselves, should come forward with actions in this regard. Only then a clearer and broader picture of the human rights issues of Indigenous children in Bangladesh can be drawn up. And finally, existing laws and policies should be

used and affirmative actions should be taken by the State in proper consultation with Indigenous peoples to protect and promote the human rights of Indigenous children in the country.

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CHAPTER-VIII

The CHT Accord in Retrospect

Prof. Mong Shanoo Chowdhury*

The current status of implementation of the Chittagong Hill Tracts (CHT) Accord is extremely disappointing as the process of its implementation is stuck in the administrative jumble of exchange of letters, meetings and seeking explanations etc. What is most alarming is the perceptible lack of commitment by successive governments to break the deadlock that the Accord is presently caught up in. Though there is no denying that many of the provisions (mostly of lesser importance) in the Accord have been implemented either fully or partially but disturbingly enough several crucial provisions of the Accord, to ensure limited self-rule and help preserve the characteristics of the tribal inhabited region of the CHT, remain totally unimplemented. Looking at the current developments with regard to the implementation of the Accord, one cannot feel optimistic to think that all other remaining provisions will be taken care of. The trend in the government circle in regard to implementing the Accord fully is neither reassuring.

A. CHT Accord at a Glance with Focus on the Salient Features:

The CHT Accord has been arranged under four parts: Part A. General (4 provisions); Part B. Hill District Local Government Councils (35 provisions); Part C. The Chittagong Hill Tracts Regional Council (14 provisions); and Part D. Rehabilitation, General Amnesty and Other Matters (19 provisions).

The main features of the Accord are as follows:

1. Part A:

- (a) Recognizes the CHT as a '*tribal-inhabited region*' and the need to preserve its characteristics and attain the overall development thereof.
- (b) Provides for forming a 3-member Implementation Committee with a Convener to be nominated by the Prime Minister in order to monitor the process of implementation of the Accord.

In order that the characteristics of the '*tribal inhabited region*' are preserved, the following provisions were incorporated in the remaining Parts of the Accord:

2. Part B:

The important provisions in this Part are:

- (a) Definition of non-tribal permanent resident has been settled to mean one who owns lands of lawful entitlement in the CHT.
- (b) No land and premises, including the leasable *Khas* (government lands), within the territorial limits of the Hill Districts shall be transferable by lease, settlement, purchase or sale without the prior approval of the Council.
- (c) A separate voter list for the CHT is to be prepared with the inclusion of only its permanent residents who are entitled to be considered as legally eligible for enlistment in the CHT voters' list.
- (e) Traditional Circle Chiefs (popularly known as Raja) are authorized to issue permanent resident certificate to residents of their respective Circles.
- (f) To further strengthen the power and functions of three HDCs the following subjects, such as, supervision, maintenance and improvement of the law and order, general administration, police, land and land management, secondary education, youth welfare, environmental protection and development, local tourism, agriculture etc. have been included in the functions and responsibilities of the HDCs.

3. Part C.

- (a) Formation of the CHT Regional Council with the aim to transform CHT into a unique political and administrative unit in the region. The Accord devolves on the Regional Council the authority to supervise and coordinate the subjects transferred to the HDCs, law and order, general administrations, development, CHT Development Board, traditional and social justice etc. and the power of giving license for heavy industries.
- (b) The Accord also requires the government to consult Regional Council before enacting any laws affecting the interest of the CHT.

4. Part D includes among others:

- (a) A Land Dispute Resolution Commission would be constituted to settle land disputes arising out of forcible land grabbing by the Bengali settlers and unlawful entitlement and acquisition.
- (b) Establishment of a Ministry for the Chittagong Hill Tracts Affairs with a cabinet minister from among the *Jumma*. An Advisory Committee shall also be constituted to lend support to this Ministry.

- (c) Withdrawal of all temporary camps belonging to the army, the Ansars (an auxiliary force), and the Village Defence Party (VDP), barring the Border Guard Bangladesh (BGB) and permanent army garrison set up in the three district headquarters and those at Alikadam, Ruma and Dighinala.
- (b) Undertake rehabilitation of Jumma refugees who returned from India, internally displaced Jumma families and the returnee members of the PCJSS under the supervision of a Task Force to be constituted by the government;
- (c) The government, subject to the availability of land in the locality, to provide land to Jumma families having no land in order to ensure their land ownership. In the event of non-availability of land, grove land shall be provided.
- (d) Allocation of additional funds by the government on a priority basis for the implementation of increased number of projects towards developments in CHT;
- (e) The government requires maintaining 'quota reservation' for the Jumma people in respect of government service and in institutions for higher studies.
- (f) Only the permanent residents of the CHT are to be appointed to all the posts of officers and employees of different ranks and categories in government, semi-government, local government and autonomous bodies of the CHT, subject to priority to be given to the *Jumma* people.

B. Provisions of the Accord So Far Fulfilled:

As per provisions of the CHT Accord the following steps were taken by government towards the implementation of the Accord:

1. Amendment to several sections of the three Hill District Acts 1989 (Act 19, 20 & 21 of 1989), including changing names of the Councils from (Rangamati, Khagrachari & Bandarban) Local Govt. Council to (Rangamati, Khagrachari & Bandarban) Hill district Council were carried out with the addition of 12 more functions to the existing ones, though Clause 17 of the Accord was not properly reflected in Section 42 of the HDC Act.
2. Institutions as stipulated in the Accord have been set up: such as-
 - (a) Chittagong Hill Tracts Affairs Ministry was created and a minister appointed.
 - (b) Chittagong Hill Tracts Regional Council Act was enacted in 1998.
 - (c) Chittagong Hill Tract Regional Council was formed on an ad hoc basis.
 - (d) To ascertain/determine the internal refugees (persons displaced during

insurgency) and their rehabilitation a Task Force for the Rehabilitation of the Returnee Refugees and Internally Displaced Persons was constituted.

- (e) The Chittagong Hill Tracts Land Dispute Resolution Commission Act, 2001 was enacted and so far four chairmen were appointed.

The Accord calls for the transfer of 33 fields of authority and responsibilities to the HDCs. 11 out of 33 subjects and some functions (out of 68) including 5 establishments/functions handed over after the Accord were so far transferred to the HDC. The claim by the government that 23, 22 and 21 subjects have so far been transferred to Rangamati, Khagrachari and Bandarban respectively is misleading. In fact, the total number of subjects so far assigned to under the jurisdiction of the HDC is 11 only indicating that the overstated figures of 23, 22, & 21 are the combined figures of subjects and establishment/functions transferred to three HDCs. It is to be noted that each subject has a number of functions to deal with. In fact, the transfer of subjects has not been much effective either due to in-built financial constraints of the HDCs.

C. Provisions of the CHT Accord that Await Proper Implementation:

The CHT Indigenous peoples have a general feeling that enough has not been done by the government to take the implementation process of the Accord forward, failing thereby to live up to Indigenous peoples' (of the CHT) expectation and meet their aspirations. The expectation particularly refers to the devolution of power to the CHT Regional Council and the Hill District Councils in the way it has been stipulated in the Accord seventeen years from now. These are in brief as follows:

1. Clause 1 of Part A of the CHT Accord declares CHT as the "tribal inhabited region" and recognizes the need of preserving the characteristics of this region. But even after 17 years into the agreement signed between the government and the Parbatya Chattagram Jana Samhati Samiti (PCJSS), the sole political organization of the CHT Indigenous peoples to spearhead the struggle of self-determination in the CHT, the government has so far been unsuccessful to come with measures needed, in essence, to preserve the tribal character of the CHT. On the contrary, indulgence to actions is often encouraged to destroy the distinguishing features that made the CHT distinctive from the rest of the country.
2. The Task Force constituted for rehabilitating the India Returnee Refugees (IRR) and ascertaining/identifying Internally Displaced Persons (IDP) has failed not only to re-establish the IRRs in their original piece of lands and homesteads but also to list /determine the exact figure of IDPs during the last sixteen years of its existence.

Under 20 point package deal signed on 9 March 1997, 12,222 Indigenous refugee families returned from camps in Tripura. The Task Force provided most of the proposed financial benefits to these families. However, 9,780 families are yet to be rehabilitated on their rightful lands.¹ The IDPs numbering about 90,208 families² are yet to return to their original homes and lands for the last more than two decades. Nor have they even received primary healthcare, drinking water, food security and livelihood security from the state. The healthcare activities of MSF (Medicine Sans Frontiers) along with the activities of some UNDP projects in the remote Sajek Valley, where most of the IDPs took refuge during the insurgency period, have been stopped, though reportedly on security reasons, but largely believed to have links to resisting violent land grabbing attempts by settlers and boycotting the Baghahat Bazaar following communal attack on the *Jummas*. However, UNDP could resume some of their activities there in recent months.

3. A major source of discontent is the long-drawn dispute over lands between the Indigenous peoples and settlers from the mainstream population brought in officially for settlement in the hills during the period from 1979 to 1985. Repeated assurances from the Prime Minister Sheikh Hasina, even during her second term in the government, has failed to make any headway in resolving the land disputes. The Chittagong Hill Tracts Land Dispute Resolution Commission could not start its function, although four chairmen of the Commission had completed their terms/duration of services. The reasons attributable to such an impasse are the following:
 - 3.1. Delay in amending the Chittagong Hill Tracts Land Dispute Resolution Commission Act, 2001 to make it consistent with the CHT Accord.
 - 3.2. Freezing up of the 13-point amendment proposals to the Chittagong Hill Tracts Land Dispute Resolution Commission Act, 2001 proposed by the Chittagong Hill Tracts Regional Council and approved by the CHT Peace Accord Implementation Committee headed by Ms. Sajeda Choudhury on its 4th and 5th meetings held on 22 January and 28 May 2012 and finally unanimously agreed to at the inter-ministerial meeting chaired by the Law Minister on 30 July 2012.³ Surprisingly, only 10 out

1 Parbatya Chattaram Bastabayan Prasange, Parbatya Chhatagram Jana Samhati Samiti, 2 December 2013

2 As determined in an exparte meeting by the task Force for the Rehabilitation of Refugees on 15 May 2000. The meeting was boycotted by its 2 members who were representatives of PCJS and Refugee Welfare Association in protest against unilateral & irregular changes made by the officials of the CHT the Ministry on the definition of IDPs as agreed unanimously at the previous meeting of the task Force

3 It is to be noted here that "The Chittagong Hill Tracts Land Dispute Resolution Commission (amendment) Act 2013" presented in the Parliament on 16 June 2013 included only 10 of the 13 amendments. 3 proposed amendments were left out and of the 10 amendments included 2 were not properly phrased as were agreed to..

of 13 amendments agreed were included in the amended draft while 2 of the 10 proposed amendments were not properly phrased. The rest 3 amendments were left out. The amended draft was approved by the cabinet on 3 June 2013 and on June 16 it was placed before the parliament to be immediately sent to the Parliamentary Standing Committee on land ministry for scrutiny. The standing committee held several hearings, but it never returned the proposed amendment Bill to the house for passage.

As a result, the problem of land alienation of the *Jumma* people with a few exceptions has deteriorated critically since 1997 due to discriminatory role played by different government agencies active in the CHT. The role of the ministry of land in this process has been totally frustrating as it tends to act against the spirit of the national constitution as well as that of the 1997 Accord. It was believed that powerful lobbies within the civil and military bureaucracy are crucial factors for the deadlock.⁴

- 3.3. In the Peace Accord, it is clearly stated (Sub-para “kha” of Para 6 of Part “gha”) the Commission will resolve the disputes in accordance with existing laws, customs and usages of the Chittagong Hill Tracts. But the last Chairman of the Land Commission Justice Khademul Islam Choudhury insisted on undertaking survey of the CHT lands without the consent of other commission members and despite a clear declaration in the Accord that survey of lands shall be undertaken only after the IRR and IDPs are properly rehabilitated.
- 3.4. Cancellation of land leases granted to outsiders too has not actually been carried out though there were some initial steps taken in this regards. This problem is particularly acute in Bandarban where the severity of conflict and unrest was far less than the other two districts.⁵ As many as 1,605 plots with 40,077 acres of mostly customary jum lands (in some cases even lands with registration and in possession of villagers) of the Indigenous peoples were given in lease to the outsiders. In addition to existing 6 regular cantonments in the CHT the army has further initiated to acquire about 71,711 acres of land for installation and expansion of camps and setting up of military training facilities without consulting the HDCs/CHTRC as required under the provision of the CHT Accord. The Forest Department, to add fuel to the fire, is poised to acquire 218,000 acres of land for afforestation. All these actions will end up in the eviction of thousands of Indigenous peoples

4 Devasish Roy Wangza: Implementation of the CHT Accord, The Daily Star, 5 December 2013.

5 Op. cit

(in the meantime scores of them have already been evicted) from their ancestral territories they have been living in for centuries.⁶

D. Partially Implemented Provisions:

1. De-militarization

With insurgency in the CHT officially declared ceased following the signing of the CHT Accord in 1997, the insurgents left their hideouts, laid down their arms and returned to normal life. Necessary institutions have been set up to ensure limited self-rule and to advance the peace process in the hills. Under the circumstances, there is no justification to keep the security forces mobilized as in a zone besieged by war. The law and order situation, compared to the rest of the country, is much better in the CHT. The police are enough to look after policing in the region. The overwhelming presence of the security forces, in fact, could not make any visible impact to cut back the incidents of fratricidal clashes and other forms of violence involving the hill men and settlers and the resultant loss of lives.

Apparently, there has not been any significant move to wind up military camps from the CHT. The PCJSS claims 31 out of more than five hundred temporary security camps as withdrawn till 2001. With Awami League back for its second term in the government in 2009, the government decided to pull out 35 temporary camps including Kaptai brigade headquarters from the CHT areas.⁷ However, the details of the implementation of this decision remained sketchy.⁸ PCJSS claims that some of the camps stated to have been withdrawn have once again been manned by members of the Armed Police Battalion.⁹ The government, on the other hand, claims that around 172 camps were so far dismantled. But the reports on the Status of the Implementation of the CHT Accord prepared by Larse Anders Baer disagree with this figure.¹⁰ Even if the government claim stands correct many hundreds still remain.

Intriguingly, the Accord acknowledges the presence of six full-fledged cantonments to continue in the CHT with an area of 5093 square miles, the likes of which are not to be found elsewhere in any part of the country.

2. Devolution of Power on HDCs and CHTRC:

2.1. Three Hill District Councils:

The three Hill District Councils are also mandated to supervise and coordinate the functions of local government bodies such as Municipality, Union Parishad

6 Parbatya Chattaram Bastabayan Prasange, Parbatya Chhagram Jana Samhati Samiti, 2 December 2013.

7 Biggest Pullout from the CHT, Shakhawat Liton, The Daily Star 30 July 2009.

8 Peace Accord must not remain in paper only: Farid Hossain, The Daily Star, 2 December 2013.

9 Parbatya Chattaram Bastabayan Prasange, Parbatya Chhagram Jana Samhati Samiti, 2 December 2013

10 Reports on the Status of the Implementation of the CHT Accord by Larse Anders Baer: submitted to the UNPFII in 2011.

and Upazila Parishads in their respective districts. But as no acts of the local government bodies have been amended in line with the HDC Acts and no change were brought about in the Rules of Business of the HDCs to meet the new ground realities and needs following the Accord, the Hill District Councils are practically helpless to exercise any supervisory authority over the local government bodies. With the HDCs yet to be made effectively functional by devolving authority on them as envisaged in the Accord, they will continue to exercise insufficient jurisdiction over the development planning and projects of the transferred subjects.

On the contrary, there are moves in and outside the government to thwart the implementation process of the Accord:

In violation of the section 4(5) incorporated in the HDC Act following the CHT Accord that provides for the issuance of permanent resident certificate to a non-tribal by the concerned Circle Chief, the DC's in the CHT have also been authorized by a government circular no. CHTAM (P-1)-HDC/Certificate/62/00-587 to issue permanent resident certificate to the non-tribals.

- (a) Annual Conferences of the Deputy Commissioners held in Dhaka from 2009 to 2012 called upon the government to review section 26(c) that reads: "The council can supervise and control functions of Headman, Chainman, Amin, Surveyor, Kanungo and Assistant Commissioner (land)" and demanded instead to keep their services under the control of the Deputy Commissioner. Similarly, the responsibility to collect land development tax vested with the HDC and to be credited to the Council's fund as per section 65 of the HDC Act was also sought to be reviewed in favour of assigning the responsibility to the Deputy Commissioner. In another move from the same conference in 2012, it asked the government to replace the words "prior approval" with that of "no objection" in section 26 (a) which reads: no land including the khas land suitable for settlement within the jurisdiction of the HDC shall be leased out, settled with, purchased, sold out or transferred otherwise with the prior approval (emphasis writer's) of the Council. The acceptance of this demand from the DC's conference by the government would mean the authority of land management in the CHT districts would be vested with the DCs of the respective hill districts.
- (b) In the year 2000, a Writ Petition was filed in the High Court Division of Supreme Court of Bangladesh by one, Md. Badiuzzaman for passing an order declaring some specific sections (amended) of the Hill District Councils void and unconstitutional.
- (c) In 2007, another Writ Petition was filled by advocate Tajul Islam in the same Court for passing an order declaring the Peace Accord, 1997 and the Chittagong Hill Tracts Regional Council Act, 1998 to have been

made and executed without any lawful authority and contrary to the expressed provision of the Constitution of Bangladesh.

The High Court Division of the Supreme Court took both the petitions for hearing. The Court delivered its judgment on 13th April, 2010 declaring certain specific amendments made to District Council Act, 1989 and the entire CHT Regional Council Act, 1998 void and unconstitutional.

Governments of Bangladesh preferred an appeal to the Appellate Division of the Supreme Court against the orders and judgments of the High Court which is now pending for hearing.

2.2. CHT Regional Council:

In pursuance of the Accord the authority to supervise general administration, three HDCs and local government authorities or bodies such as Deputy Commissioners (DCs), Upazila Nirbahi Officers (UNOs), Upazlia Parishads (UZs), Union Parishads (Ups), Municipalities, CHT Development Board etc. remains to be devolved on the CHT Regional Council (CHTRC) as of now. It took more than one and half decade for the government to finally approve the rules for the functioning (the Rules of Business) of the CHTRC. However, the CHTRC voiced its reservation on some provisions of the Rules. The government, on the other hand, is not found considering issuance of administrative guidelines to help CHTRC to function as an effective regional institution as has been envisaged in the Accord. From the present trend of the extent and manner in which the administrative authority in the CHT districts is exercised, the DCs still seem to hold extraordinary powers given to them by the CHT Regulation and there has not been any move to redefine the role and functions of the DC following the emergence of the CHT institutions in the post Accord period.¹¹

Clause 9 (a) of the Accord and section 22 (a) of the CHTRC provide for the Regional Council to coordinate and supervise all development activities carried out under the three Hill District Councils. It is also provided that the decision of the Regional Council shall be taken as final in the event of any lack of coordination and inconsistency found among the Hill District Councils in discharging their responsibilities. It is also laid down in clause 9 (c) and section 22 (d) of the Regional Council Act 1998 that the Regional Council shall coordinate and supervise the three hill districts in matters of general administration, law and order and development. But different authorities in the district tend to ignore the CHTRC authority. In a circular [no.CD/DC/2912)2000-31 dated 10 April 2001] in 2001, the Cabinet Division

¹¹ Amena Mohsin. The Politics of nationalism: The Case of Chittagong Hill Tracts, Bangladesh, The University Press Limited, 2002.

issued an instruction to local government bodies to cooperate with the Regional council but to no avail.¹²

Clause 13 of the Accord requires the government to enact, in consultation with and as per the advice of the Regional Council, any law relating to the CHT. The CHT Regional Council is also competent to apply or submit recommendations to the government if it becomes necessary to amend any law which bears an adverse effect on the development of the CHT and welfare of its people or to enact any new law. However, these provisions remain inoperative. Neither has the CHTRC been ever consulted with nor have its recommendations been ever taken into account while making any new law on the CHT affairs. For example, the CHT Regional Council was side lined while framing the Code of Rules on CHT NGOs, The Wildlife Protection (amendment) Act 2012 and the Forest (amendment) Act, Small Ethnic Groups Cultural Institutes Act 2010, National Women Development Policy 2012 etc. However, some of the proposals put forward by the CHTRC found inclusion in the National Education Policy 2010.

The government has passed the CHT Development Board Act 2014 in the parliament on 1 July 2014 during the Budget Session without having consultation with and advice from CHT Regional Council. With this Act, the CHT Development Board has been given a status of a statutory body. In fact, the main institutions of special administrative system in the CHT are comprised of three Hill District Councils at district level and the CHT Regional Council at regional level. The enactment of the CHT Development Board Act 2014 will undoubtedly cause harm to the special administrative system of the CHT that comprises of the CHT Regional Council and three Hill Districts Councils and will invite administrative complexity in the administration and the development as well.¹³

As per the CHT Accord and Article 22(a) and (c) of CHT Regional Council Act, all the development programmes conducted under the CHT Development Board including the Hill District Councils shall be coordinated and supervised by the Regional Council. Despite the legal provision in the CHTRC Act requiring the CHT Development Board to discharge its responsibilities under general and overall supervision of Regional Council, the CHTDB authority has been all the more ignoring the said legal bindings.

It is also to be noted that there is provision for representation from the CHT Regional Council and three Hill District Councils in the CHT Development

12 Report on the implementation of the CHT Accord, Information and Publicity Department, PCJSS, 30 April 2004.

13 Statement of Parbatya Chattagram Jana Samhati Samiti (PCJSS) in Context of the Present State of Implementation of CHT Accord, Amendment to the three Hill District Council Acts, Enactment of the CHT Development Board Act and Establishment of the Science & Technology University and College in Rangamati, 14 July 2014.

Board, but more often it is the government bureaucrats who are nominated for the posts of Chairman, Vice-Chairman and regular members of the Board in whom the executive power remains vested. It means that the government bureaucrats retain the principal responsibility of the CHT Development Board in their hands, which will ultimately hinder the pro-people and balanced development, and interfere with self-determined development rights of the CHT people and over all, the special administrative system comprising of the CHT Regional Council and the three hill district councils.

3. The CHT Ministry:

Clause 19 of Part D of the CHT Accord provides for setting up a Ministry on the Chittagong Hill Tracts Affairs (MoCHTA) with a full minister to be appointed from among the *Jumma* people. It also provided for the constitution of an Advisory Committee to lend support to this Ministry. The Rules of Business for the Ministry was adopted on 15 July 1998 and an Indigenous MP was appointed as minister. But during the four party coalition government from 2002-2006, a Deputy Minister was put in charge of the ministry violating the terms of the Accord. Since then there has not been any full minister to lead this ministry. The Advisory Committee of the ministry has outlived its term and remains to be reconstituted till to date. The CHT Ministry has been unable to exercise its powers and functions as laid down in its Rules of Business. 99% of all officers and staffs in the ministry are non-Indigenous and most of them are not sensitive to or have little insight into the issues that grip the CHT. As a result, actions decided at the ministry for implementation in the CHT, instead of resolving the problem, often complicate them.

The CHT Accord envisages HDC, CHTRC and MoCHTA to be truly effective and functional institutions competent enough to ensure limited self-rule as was visualized by the writers of the Accord, largely aimed to resolve the ongoing crisis in the CHT. But in reality, the HDC has been reduced to the implementing office of MoCHTA at the district level following denial of its commanding role by the government as the apex body in the district. CHTRC, on the other hand, languishes for lack of functional authority and powers deserved by it and thus looked upon as the figurative regional body only. As a matter of fact, there seems to no coordination among these three layers of administration.¹³

E. The Unimplemented Provisions

Crucial subjects such as land administration and management, local police, general administration & law and order, forest and environment, *jum* cultivation, maintaining statistics of birth and deaths, tribal law and social

¹³ Amena Mohsin. The Politics of Nationalism: The Cases of the Chittagong Hill Tracts, Bangladesh, The University Press Limited, 2002.

justice, tourism etc. remain to be transferred to the HDCs despite repeated assurances from the government to this effect.²⁴ To keep the present article within a reasonable limit, a brief overview of only four of the unimplemented crucial provisions of the Accord is given below:

1. Land Administration and Management:

In execution of the provision incorporated in clause 34 (a) of the CHT Accord, the authority of land administration and management remains to be officially delegated to the HDC. The Deputy Commissioners in the CHT region are indulged in granting lease and settlement of lands to outsiders of the hill districts despite the legal requirement laid down in clause 26 (a) of the CHT Accord and section 64 (a) of the HDC Acts 1989 (amended up to 1998) that no land and premises, including the leasable *khas* lands ('state' lands) within the territorial limits of the Hill Districts barring the areas under government reserved forests, Kaptai hydroelectric project, Betbunia satellite station, state owned industries and factories and the lands recorded in the name of the government shall be transferrable by lease, settlement, purchase or sale except without the prior approval of the HDC. The CHT Ministry, by a letter vide memo no. CHTAM(P-1)/HD/Miscellaneous/85/2000/529 on 14 October 2000, asked the DCs in the three hill districts to revoke the illegal lease, settlement or transfer of lands but to no avail. The process of leasing and settling of lands to outsiders (non-residents of the CHT), violating the concerned legal provisions as mentioned above, continue unabated. Recently, the process of obtaining prior approval from the HDC has begun in the cases of purchase and sale of recorded lands for mutation only.

2. Local Police:

The handing over of police and its functions to HDCs seems to be completely sidelined and is no more in the agenda of the government as the police headquarters in Dhaka is totally against it. Clause 33 (a) in part B of the Accord delegates the functions of "maintenance and supervision of law and order" in the hills to the HDC and clause 34 (b) in part B of the Accord provides for transferring the police to the Hill District Councils. These provisions of the Accord have been reflected in the HDC Acts (amended up to 1998) in sections 62, 62 (3) & 63. Section 62 of the HDC Acts provides for the establishment of a local police force with a clear mandate to take care of law & order situation. This

14 The Awami League government which co-signed the CHT Accord in 1997 assured of implementing the Accord fully by 2001 before its term of office ended. But it failed to keep its promise. Again when the same party bounced back to power with a land slide victory in the general election of 2009 it once again started committing itself into fully implementing the Accord before the end of its second term in the office. This time too it failed to keep to its promise.

force, on the other hand, is essentially to be multi-ethnic in composition to ensure non-discriminatory role by its members. Section 62 (3) stipulates that the officers and members of all ranks of district police shall be responsible to the Council in the matter of discharging their duties and responsibilities. However, contrary to what has been stipulated in the Accord, the higher police authorities in the hill district continue to exercise this power as they used to do before. Although the government transferred some hill men (Indigenous) police personnel to the CHT, their numbers are too few to make any significant impact. In fact, transfer of the functions of policing to the Council would constitute an important part of de-militarization and would help prevent communal violence which tends to erupt in the CHT not only due to non-implementation of the Accord but also because of deliberate violation of what the Accord stipulates about. It can be mentioned here that policing in the insurgency affected and post-conflict states of North East India is entirely carried out by a mixed police force which draws its members from different Indigenous groups in the region. The CHT too had its own police force constituted under the Frontier Police Regulation 1881 (Act No. III), before it was finally disbanded in 1948 for reasons better known to the then government.

3. Election to the HDCs:

When the deal on the CHT was signed the Bangladesh nationalist Party (BNP) opposed it vehemently. However, all other political parties accepted the Accord without entering into any further polemic. One of the most crucial parts of the Accord, along with land issue, is the devolution of power to the institutions created by it. These institutions are to be composed of elected representatives. The CHT Accord provides for holding elections using a voter list made up of permanent residents of the CHT only. But the government is being constantly accused by the CHT Regional Council not only for its lack of initiative to make any move in this regard but also for playing the waiting game aiming at shelving the issue for good.

Though the tenure of three Hill District Councils had already expired in 1992 long before signing of the CHT Accord, no government had taken initiative to hold elections to the Councils during the following 22 years and to that end, no initiative was taken to formulate Election Rules and Electoral Rolls Rules for chairman and members of the Councils. The practice being followed presently is to install partisan fellows as chairmen and members of the HDCs by the party in power. The five-member Interim Councils, being nominated, are therefore found to have seriously fallen short of being transparent, accountable and liable to the people. As a result, these Councils have become centres of rehabilitation of partisan people of the party in power and dens of institutionalized corruptions. Common people are tired of this situation and are increasingly insisting on holding elections to HDCs. A widespread demand to this end

notwithstanding, the government has, without consulting the CHTRC as required by law, taken initiative to increase the strength of the three interim Hill District Councils from 5 to 11 members in the name of ensuring participation of various ethnic groups in the interim Council. It is needless to say that there can be no other alternative to an elected full-fledged Council of 34-members to ensure representation of all ethnic groups and above all, to constitute a pro-people, accountable and transparent Hill District Councils.¹⁵

In utter disregard of section 53 of the CHTRC Act 1998, the State Minister of CHT Affairs Bir Bahadur Ushwesing placed in the Parliament Bills seeking to increase the numerical strength of each of the three interim Hill District Councils from 5 to 11 members including the Chairman, under titles of Rangamati Hill District Council (Amendment) Act 2014, Khagrachari Hill District Council (Amendment) Act 2014 and Bandarban Hill District Council (Amendment) Act 2014 and all these Bills were referred to the Parliamentary Standing Committee on the CHT Affairs for further examination on the same day.

4. Amnesty:

Clause 14 of Part D of the Accord declares amnesty for the members who shall deposit their arms and ammunition on the scheduled date. The government shall also withdraw the cases lodged against PCJSS activists and armed cadres. Unfortunately, no amnesty was declared for those who were convicted in the military courts, and no cases against the PCJSS and Shanti Bahini members have so far been withdrawn during all these years since the signing of the Accord.

F. Factors Responsible for the Deadlock in Implementing the Accord:

Several factors could be held responsible for stagnating or further reversing the trend of the process of Accord implementation:

There is visible lack of 'understanding and ownership of CHT Accord among political leaders and government functionaries. Few political leaders and bureaucrats (both civil and military) understand the background of the CHT conflict and its political and constitutional history. The status of the CHT as an autonomous area in British times, and as a virtually independent territory during and before Mughal times, needs to be remembered. The CHT's status needs to be understood by comparing it to the states in Northeast India, and not to the neighbouring districts of Bangladesh (which were ruled by the Mughals and British when the CHT remained outside such rule, except after 1860).

14 Statement of Parbatya Chattagram Jana Samhati Samiti (PCJSS) in Context of the Present State of Implementation of CHT Accord, Amendment to the three Hill District Council Acts, Enactment of the CHT Development Board Act and Establishment of the Science & Technology University and College in Rangamati, 14 July 2014.

Because of such a lack of understanding, any move to decentralize authority from the centre is resisted in the name of stability, sovereignty, territorial integrity and political unity. Unfortunately, the CHT peace process has long been held hostage to such supposedly pro-state slogans and phrases that are actually devoid of any substance.

Apart from some civil society leaders at national level, the rest of the country has not taken ownership of the Accord. This has to change. Coordinated measures are needed from all major sections of the national citizens to “de-demonize” the CHT Accord and to realize how it seeks to respect the inherent rights of the CHT people, particularly the Indigenous peoples, and yet maintain the stability of the region as an integral part of Bangladesh and respect the political unity and territorial integrity of country.’¹⁶

‘The often violent fratricidal conflict of the CHT has added fuel to the fire. It is not the cause of non-implementation, but has certainly acted as a crucial factor in retaining the status quo and, in some cases, in reversing the gains made by the CHT Accord.’¹⁷

In fact, the government lacks courage as well as political will to go all out for the execution of the Accord. It was evident in 2011 when the government, while placing the 15th amendment to the constitution in the parliament for passage, could have included the aspirations of the Indigenous peoples of Bangladesh. But the amendment passed in the parliament could not add anything new to the Constitution to help Indigenous peoples in Bangladesh enjoy their legitimate rights deserved by them legally, morally and historically.

G. Conclusion:

It should be noted with a little bit of logic that the major political parties that ruled the country at different times strongly desired an end to the CHT crisis which drove them to enter into dialogues with PCJSS in an effort to work out a solution to it. General Ershad, the chief of Jatiya Party, at the head of the government deputed his high level military officials who held talks with PCJSS 6 times since 1985, though without any positive result. With BNP in the seat of power, as many as 13 dialogues were held with PCJSS until 1995 by a 9 member team comprised of MPs, again with no result. At last, 7 rounds of talks were held with the National Committee on the CHT appointed by the Awami League government (1996-2001) before the CHT Accord was signed in 1997. The entire exercise of the dialogue by leading political parties (while in the government) in the country was aimed at arriving at an acceptable solution of a long standing

16 Devasish Roy Wangza: Implementation of the CHT Accord, The daily Star, 5 December 2013.

17 Op. cit.

problem, the country continued to face in the CHT. It clearly indicates of the sincere desire of these parties to go for a lasting peace in the CHT to ensure a stable and democratic Bangladesh at the end. Now with the Accord signed, followed by handing over of arms and returning of the members of Shanti Bahini to normal life, if the government, taking advantage of this situation, turns its face from fulfilling its commitment pledged in 1997, it could certainly be accused of having broken the trust that the CHT people had placed on it. This is unbecoming of a government claims to be wedded to justice, democracy and human rights.

Moreover, the government policy of buying time in implementing the Accord has resulted in the emergence of a number of vested groups (formed by those who stood against reaching any 'understanding with PCJSS' from the very beginning) who oppose it vigorously. These groups would have never appeared on the scene had the Accord been put into force immediately after the Accord was signed. The ground was ripe then to push through any measure aimed at fulfilling provisions of the Accord. Thus the government cannot stay clear off its onus of purported delay that helped surface vicious opposition to the Accord by a number of groups who stand profited from keeping the CHT crisis alive. It has, therefore, to bulldoze all the opposition to the Accord simply due to the fact that it made a commitment to a segment of our country's population to the effect that their feelings of deprivation of their legitimate rights would be done away with once and for all and the success thus achieved would surely pave the way for essence of democracy to prevail and a durable peace to settle in the country.

H. Recommendation:

The one and only recommendation is to *"Go for the implementation of the Accord immediately without finding any excuse against it."* As a matter of fact, 17 years into the agreement, no excuse is virtually tenable on any ground.

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Photo : Diplo Chakma

CHAPTER-IX

Recommendations

Constitution Recognition

1. Provide constitutional recognition of the existence of Indigenous peoples with individual and collective rights.
2. Provide constitutional recognition of special governance arrangement of the CHT region for the protection and promotion of the political, economic, cultural and religious rights of Indigenous Jumma people in the region.
3. Ensure constitutional provision with a guarantee that no amendment of constitutional provisions and laws relating to Indigenous peoples will be made without the prior consent of Indigenous peoples.

National Laws and Policies

1. Enact the draft law on the rights of Indigenous peoples in consultation with Indigenous Peoples Organisations, the CHT Regional Council and the Parliamentary Caucus on Indigenous Peoples.
2. Amend the existing laws affecting Indigenous peoples consistent with the provisions of the UNDRIP, the ILO Convention No. 107 and 169 and the CHT Accord.
3. Form an advisory committee comprising Indigenous representatives of the plains to lend support to the Special Affairs Division (SAD) and transfer the SAD to a relevant ministry from Prime Minister's office.
4. Provide ethnic disaggregation of national censuses.

International and National Human Rights Frameworks

1. Ratify ILO Convention No. 169 on Indigenous and Tribal Peoples 1989.
2. Endorse the adoption of the UNDRIP and implement its provisions.
3. Implement recommendations of the 10th session of the UNPFII related to the CHT.
4. Establish a separate cell on Indigenous affairs under the National Human Rights Commission, Bangladesh.

Representation of Indigenous Peoples in Governance System

1. Provide seat reservation for Indigenous peoples including women in the parliament and all local government bodies.
2. Set up appropriate mechanisms for political participation of Indigenous peoples of the plains at national and local level.

Land, Territories and Resources

1. Make arrangement for restitution of lands of Indigenous peoples of the plains through setting up a separate land commission.
2. Make the CHT Land Dispute Resolution Commission functional by amending its contradictory provisions of existing Act of 2001 suggested by the CHT Regional Council.
3. Stop forced eviction of Indigenous peoples from their ancestral lands and land confiscation in the name of reserved forest, military bases, national/eco-parks, tourist attractions, development projects and government establishments on their ancestral lands.
4. Recognise and respect traditional land rights including individual and collective rights of Indigenous peoples envisaged in the UNDRIP and ILO Convention No. 169 on Indigenous and Tribal Peoples.

Development

1. Formulate a separate development policy for Indigenous peoples of the country.
2. Respect the right of free, prior and informed consent at every stages of any development programme/project affecting Indigenous peoples.

Education

1. Introduce mother tongue-based primary education for all Indigenous children.
2. Undertake effective initiatives to focus diverse cultures of Indigenous peoples of the country in the school curriculum with due respect.
3. Undertake measures to ensure adequate infrastructural facilities related to education for Indigenous children, especially those who live in the far-flung areas.
4. Maintain 5% quota for Indigenous students in the higher educational institutions.

Job and Employment

1. Ensure 5% quota for Indigenous candidates in the government jobs including Bangladesh Civil Service.
2. Undertake projects for capacity building of Indigenous peoples including on self-employment, income-generating activities, vocational training, and marketing strategies.

Violence against Indigenous Women

1. Ensure safety and security of Indigenous women and girls and stop all forms of violence and discrimination against them.
2. Appoint an Indigenous and Minority Women and Girls' Rights Ombudsperson within the National Human Rights Commission, Bangladesh to ensure inclusion of gender sensitive concerns for Indigenous and minorities in framing policies and legislation.
3. Investigate all the incidents of sexual abuse, rape, murder, abduction, etc. perpetrated against Indigenous women and ensure exemplary punishment for the criminals
4. Undertake legal aid programme for Indigenous women victims of violence and set up One-Stop Crisis centres at major hospitals in the Indigenous inhabited areas of the country.

CHT Accord Implementation

1. Expedite full implementation of CHT Accord of 1997 with letter and spirit.
2. Declare a 'roadmap' for implementation of the CHT Accord.
3. Withdraw all temporary military camps and repeal de facto military rule 'Operation Uttaran' from the CHT following the agreement of the CHT Accord in order to ensure peace and harmony in the CHT.



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