



National Human Rights Commission, Bangladesh

Implementation of the Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues



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October 2014



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FOREWORD

I feel privileged to write the foreword for this research study Implementation of Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues. The study was conducted by an accomplished researcher, an academic of high repute, and currently, the Dean of the Faculty of Law at Chittagong University, Professor Abdullah Al Faruque. This study is one in a series of studies conducted under the auspices of the National Human Rights Commission (NHRC) of Bangladesh focusing on different aspects of human rights demanding special attention and necessary intervention from the NHRC. The study is also in line with the core areas of NHRC intervention as identified in the NHRC Strategic Plan 2010-15.

The Chittagong Hill Tracts Peace Accord (hereinafter the 'Peace Accord') was signed following a long armed insurgency of the indigenous Chittagong Hill Tracts (CHT) peoples. However, some core provisions of the Peace Accord have not been implemented, and therefore, today, many view it as a potential cause of extreme frustration for the indigenous peoples, leading to 'disturbances', movements or struggles. The current situation, now peaceful, now volatile, is a lingering threat to human rights in the CHT. The situation demands a closer analysis of the implementation of the Peace Accord, the obstacles to its full implementation, threats arising out of non-compliance, and the remedial measures that need to be taken to fully realize the objectives of the Peace Accord.

Professor Faruque aptly puts it:

The 1997 CHT Peace Accord aims to establish a regional system of self-government in CHT and preservation of the area as a tribally inhabited region, recognizes the land rights of the tribal peoples and establish mechanism for resolving land disputes, demilitarization of the region, and rehabilitation of the refugees. But the slow pace and partial implementation of the Peace Accord has generated frustration among the tribal peoples of the CHT and is one of the sources of violation of the human rights of the tribal peoples.

Dr. Abdullah Al Faruque draws this conclusion in unequivocal terms: “Full and effective implementation of the Peace Accord is essential for protection of human rights of the tribal peoples in the CHT region.”

The human rights situation of the peoples in the CHT region is not only a matter of domestic concern, but also international concern for indigenous peoples, as firmly stated by the United Nations Declaration on the Rights of Indigenous Peoples. These rights extend to populations that are indigenous to the countries in which they live, have distinct identities and ways of life, and face very specific human rights issues related to histories of various forms of oppression, such as dispossession of their lands and natural resources, and denial of cultural expression.

It is a political reality that the indigenous peoples in the CHT, irrespective of how they are defined, are among the most discriminated against, socially and economically marginalized, and politically subordinated segments of the society. Regardless of the controversy over defining and categorizing them, the overwhelming majority of the stakeholders agree that there is a need to address the human rights issues facing these distinct peoples. These are issues that are very similar to those faced by groups that have been unquestionably recognized as indigenous peoples in other parts of the world and that fall within the sphere of the current international concern for the rights of indigenous peoples.

In the report submitted to the Human Rights Council, Twenty-fourth session, Agenda item 3, para. 13, the Special Rapporteur on the Rights of Indigenous Peoples,

James Anaya:

received allegations that in the face of inadequate regulatory frameworks, indigenous peoples' lands in Asia continue to face a number of threats. Land dispossession by non-indigenous settlers and migrants continues in many countries. The adoption of policies in States promoting individual titles over collective land titles was also raised as an issue in a number of jurisdictions. [...] the dispossession of land is having a profoundly negative impact on indigenous peoples' social and cultural patterns and means of subsistence.¹

¹See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf

The above is a serious issue in many jurisdictions in Bangladesh. As in many other countries with indigenous populations, many analysts in Bangladesh believe that militarization of the territories of indigenous peoples is one of the major challenges to the realization of their rights. The presence of military forces in indigenous areas allegedly resulted in a number of violations of the rights of indigenous peoples. The widespread nature of militarization poses a serious obstacle to access to justice and freedom of expression. Intimidation and fear of reprisal prevent indigenous peoples from taking legal action against the military for ongoing and historical abuses. Human rights groups often express deep concern that the presence of the military forces in the CHT has reportedly resulted in the forceful acquisition of indigenous lands, the increased settlement of non-indigenous groups in those lands, the destruction of indigenous peoples' homes, and breakdowns in indigenous peoples' control over their territories.

Despite these issues and the slow pace of implementation of the Peace Accord, the latter is testimony to the honest will of the Government to resolve the CHT issue in a manner that reflects the aspirations and hopes of the indigenous peoples living there. It is the understanding of the National Human Rights Commission (NHRC) of Bangladesh that the resolution of land disputes is the key to an overall peaceful situation in the region. The Land Commission set up to deal with these issues proved incapable and failed to gain the trust and confidence of the CHT people. Without the full support of the CHT people, it would be impossible to reap the benefits of the Peace Accord. This requires good faith to be demonstrated by all the concerned parties; an arrogant or stubborn approach of the Government can only add to obstacles to the full implementation of the Peace Accord. Another lesson learned is

that the full implementation of the Peace Accord should not be interpreted as leading to a territorial disintegration of Bangladesh or to a weakening of state security. We at the NHRC believe that true security comes from the people: when the people, the citizens, including indigenous, tribal or other ethnic groups are committed to the State and feel a sense of ownership of the State, only then does the State become truly secure.

We believe that full implementation of the Peace Accord will pave the way towards a unified allegiance of all the people of Bangladesh – irrespective of their ethnic origin, linguistic or religious differences, etc. – to their motherland, the People's Republic of Bangladesh. This will lead to a new beginning for the people in the CHT.

We can only hope that the Government will consider the recommendations made in this study with due seriousness and heal the wound that has long been the cause of suffering to the indigenous peoples in the CHT, in particular, and all the human rights-loving people, in general.

Professor Dr. Mizanur Rahman
Chairperson
National Human Rights Commission, Bangladesh

October, 2014

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EXECUTIVE SUMMARY

The Chittagong Hill Tracts Peace Accord (hereinafter referred to as the 'Peace Accord') signed in 1997 between the Government of Bangladesh and the Parbattya Chattagram Jana Sanghati Samity (PCJSS, United People's Party of the Chittagong Hill Tracts) marked a historical step for ending a long-standing ethnic conflict in Bangladesh. The 1997 Peace Accord aims to establish a regional system of self-government in CHT, preserve the area as a region inhabited by indigenous peoples and recognize their land rights, and to establish a mechanism for resolving land disputes, demilitarizing the region and rehabilitating refugees. However, the slow pace and partial implementation of the Peace Accord has generated frustration among the indigenous peoples of the CHT and is one of the causes for the violation of human rights of the indigenous peoples. Full and effective implementation of the Peace Accord is essential for the protection of human rights of indigenous peoples in the CHT region. The human rights dimension of the Peace Accord can be explained as follows: first, the Peace Accord addresses the issue of internal aspect of self-determination of the indigenous peoples; second, it contains provisions relating to land rights, and the preservation of cultural identity of the tribal peoples; and finally, it provides preferential treatment of the tribal peoples in the region in order to end the historical pattern of discrimination and injustice. The Peace Accord should be implemented in good faith by the Government, which will lead to the peace, stability and realization of human rights in the region. Although indigenous peoples in the CHT region are legally protected by the Peace Accord and other laws and regulations, there is no comparable legal framework for the protection of indigenous peoples in the plain lands, which is needed.

ACRONYMS AND ABBREVIATIONS

| | |
|-------|---|
| CHT | Chittagong Hill Tracts |
| DC | District Commissioner |
| HDC | Hill District Council |
| ICCPR | International Covenant on Civil and Political Rights |
| IRR | India returnee refugees |
| IDP | Internally displaced peoples |
| ILO | International Labour Organization |
| NGO | Non-governmental organization |
| PCJSS | Parbattya Chattagram Jana Sanghati Samity (United People's Party of the Chittagong Hill Tracts) |
| UPDF | United People Liberation Front |
| UN | United Nations |

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1. Introduction

The Chittagong Hill Tracts Peace Accord (hereinafter the 'Peace Accord') signed in 1997 between the Government of the People's Republic of Bangladesh and the Parbattya Chattagram Jana Sanghati Samity (PCJSS, United People's Party of the Chittagong Hill Tracts) marked a historical step for ending a long-standing ethnic conflict in Bangladesh. The genesis of the problem of the Chittagong Hill Tracts (CHT) dates back to the mid-1950s with the construction of the Kaptai Dam, which resulted in a large-scale displacement of the indigenous peoples.¹ The founding of the PCJSS in 1973 was a reflection of the struggle of their existence and demand for autonomy of the CHT region. The rights of indigenous peoples and this demand were not recognized when Bangladesh adopted its Constitution in 1972. The rejection of constitutional recognition and many years of political, economic and social marginalization led to the formation of the Shanti Bahini (Peace Force), the armed wing of the PCJSS, to initiate a low-intensity guerrilla war against the Government of Bangladesh in the early 1970s.

The then Awami League Government signed the Peace Accord in 1997 with PCJSS in order to end the long-standing armed conflict in the CHT. The 1997 Peace Accord aims to establish a regional system of self-government in CHT and preserve the area as a region inhabited by indigenous peoples, recognizes the land rights of the tribal peoples and establish a mechanism for resolving land disputes, demilitarizing the region, and rehabilitating the refugees. The Peace Accord is divided in four parts. However, it is important to note that only a short timeframe was set for the implementation of the various provisions of the Peace Accord, e.g. the demilitarization of the *Shanti Bahini*.

¹Shelly, 1992: 27; Gain, 2000: 17; Mohsin, 1997: 58.

The Peace Accord is the comprehensive attempt to recognize the special rights of the indigenous peoples. Implementation of the Peace Accord is vital to promote sustainable peace, harmony and development of the region. Implementation of the Peace Accord should also be viewed from a broader human rights perspective. The human rights dimension of the Peace Accord can be explained as follows: first, the Peace Accord addresses the issue of internal aspect of self-determination of the indigenous peoples; second, it contains provisions relating to land rights and the preservation of cultural identity of the indigenous peoples; and third, it provides preferential treatment of the tribal peoples in the region in order to end the historical pattern of discrimination and injustice. This restorative dimension has been manifested in many provisions of the Peace Accord; therefore, its implementation is crucial for protection of human rights of the indigenous peoples in the CHT region.

To date, the Peace Accord has been partially implemented. The slow pace and partial implementation have generated the potential cause of extreme frustration for the tribal peoples, leading to political movements. They have also widened the divide between the pro-Accord PCJSS and the United People's Democratic Front (UPDF), which strives for greater autonomy than that provided for in the Peace Accord. According to UPDF, the Peace Accord has not fulfilled the demand for full autonomy of the region.

To date, the Peace Accord has been partially implemented. The slow pace and partial implementation have generated the potential cause of extreme frustration for the tribal peoples, leading to political movements. They have also widened the divide between the pro-Accord PCJSS and the United People's Democratic Front (UPDF), which strives for greater autonomy than that provided for in the Peace Accord. According to UPDF, the Peace Accord has not fulfilled the demand for full autonomy of the region.

The continuous influx of Bengalis into the three hill districts, the denial of land rights to the indigenous peoples, and the culture of impunity for law enforcement agencies and other entities who commit human rights violations remain main problems in the implementation of the Peace Accord. Although some institutions such as the Ministry of CHT Affairs, the CHT Regional Council, the Hill District Councils and the Land Dispute Settlement Commission have been established and several laws have been adopted as per the Peace Accord, key provisions are yet to be implemented such as the devolution of powers, land management, withdrawal of temporary army camps from the CHT, and formation of the hill police and civil administration. This is creating a feeling of mistrust, fear and insecurity in the CHT areas.² Some provisions of the Peace Accord have only been partially implemented.

²See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf

The main objectives of study are to:

- assess the human rights situation of indigenous peoples in CHT and the plain land of Bangladesh and to identify the different challenges indigenous peoples of CHT and plain land are facing to exercise their rights;
- examine the status of the implementation of the Peace Accord;
- examine the issue of land disputes and specify how land issues affect the rights of indigenous peoples;
- examine the decision-making process and representativeness of the CHT Council and how it affects the rights of indigenous peoples;
- assess how the non-implementation of the Peace Accord affects civil, political, economic, social and cultural rights of indigenous peoples in the CHT;
- address the issue of constitutional recognition of indigenous peoples in Bangladesh and examine the rights of the indigenous peoples under international law.

2. Methodology

The study is based on extensive study of primary sources such as the Peace Accord, different regulations and laws on CHT, and judicial decisions on the legality of CHT Regional Council. A field visit was made in two hill districts, Rangamati and Khagrachori, to collect data and conduct interviews of key high-standing persons of the Regional Council and the Hill District Council. Secondary literature such as books, journal articles and reports were also consulted for the study.

3. Context of the Study

The CHT had the special status of an autonomously administered region during the British colonial period. In 1860, the region was constituted as Chittagong Hill Tracts (CHT) under British rule.³ Since then, many special laws, regulations and rules have been formulated to preserve the special character of the region. This status was later confirmed by the Chittagong Hill Tracts Regulation of 1900. The Regulation addressed a number of issues including control of the entry and residence of non-hill people, and restriction on the sale and transfer of land to non-indigenous people. During the British colonial period and during the early years of Pakistani rule, the CHT was recognized as a specially administered area under several constitutional dispensations, including the Government of India Act of 1919, the Government of India Act of 1935 and the Constitutions of Pakistan of 1956 and 1962.⁴ The Constitution of Pakistan of 1956 recognized the CHT as the Excluded Area. However, its status was changed in the 1962 Pakistan Constitution and was recognized as a 'Tribal Area'. An amendment in section 34 of the 1900 Regulation in 1961 curtailed the traditional land rights of tribal peoples for the first time.⁵ Furthermore, in 1964, a constitutional amendment eliminated the special status. The construction of Kaptai Dam, a huge US-funded hydroelectric project on the Karnafuli River in Rangamati, caused the displacement of a huge number of hill people, rendering thousands of people homeless and

³Codification of the Chittagong Hill Tracts Laws, Chittagong Hill Tracts Regional Council, Rangamati, 2010, p. xiii.

⁴Ibid.

⁵Ibid.

inundating 40 percent of the prime land. After Bangladesh became independent in 1971, its newly adopted Constitution failed to recognize the special status of the region despite the demands of such recognition by the tribal leaders. This led to discontent in the region and later grew into insurgency by the PCJSS, which started an armed conflict in the region. Another amendment in section 34 of the Regulation in 1979 paved the way for planned migration of Bengali peoples in the CHT region. The mass influx of Bengali peoples significantly changed the demographic composition of the region. According to Adnan:

A key component of the counter insurgency strategy consisted of 'demographic engineering' to increase the proportion of Bengalis in the population of the CHTs. In essence, this involved a two-pronged operation. The first involved use of force to evict and relocate Paharis from their lands and villages. The second involved the planned 'transformation' of thousands of landless Bengali households from plains of the country, and settling them in the CHT with plot of land provided by the state. The political objective of the demographic engineering was to accelerate the settlement of a sizeable Bengali population in the CHT that could be counted upon to be loyal to the Bangladesh state.⁶

In the midst of conflict in the region, three Hill District Local Government Council Acts were passed in 1989, which introduced a local government system in the CHT.

⁶Adnan, 2008: 165.

The conclusion of the Peace Accord in 1997 was a bold attempt to recognize internal autonomy and to restore the special status of the region. The Peace Accord contemplates the enactment of new laws and the amendment of existing laws, regulations and practices to comply with the Peace Accord on the basis of recommendations of the Chittagong Hill Tracts Regional Council (CHTRC). In line with this provision of the Peace Accord, the Government passed the Chittagong Hill Tracts Regional Council Act of 1998, the Hill District Council (amendment) Act of 1998, the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001 and the Chittagong Hill Tracts Regulation (amendment) Act of 2003. The Hill District Council Acts were amended in 1998, in accordance with the provisions of the Peace Accord, whereby the councils were provided more authority and autonomy than before through an increase in the number of subjects transferred to their authority, from 21 to 68 in 33 areas of jurisdiction, and the enhancement of their authority over land administration, local police, forests, secondary education, budgets and other matters. Prior to the signing of the Peace Accord, 15 subjects in ten areas of jurisdiction were transferred to the Hill District Councils; only another five subjects in three areas have been transferred since 1998.⁷

⁷Roy, 2000.

4. Definition of Indigenous Peoples under International Law

Determining the criteria for defining indigenous peoples has generated a great deal of controversy. This reflects a lack of consensus within the international community on the definition of indigenous peoples, which results in the current lack of a universal definition of what constitutes an indigenous people. The problem of defining indigenous peoples remains one of the unresolved issues that create an obstacle to the effective implementation of indigenous peoples' rights.

At the international level, international organizations have attempted to clarify this definitional issue. A widely used and well-known definition of indigenous peoples has been given by Jose Martinez Cobo, Special Rapporteur of the United Nations, which is also popularly known as the 'Cobo definition'. According to the Cobo definition, indigenous peoples are:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems .⁸

⁸Jose R. Martinez Cobo's Study on the Problem of Discrimination against Indigenous Populations, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1981, available at http://www.un.org/esa/socdev/unpfii/documents/MCS_intro_1981_en.pdf

The Cobo definition is well accepted and considered the most comprehensive one. It takes into account the common traits found in most indigenous populations instead of focusing on the peculiarities of each indigenous group. It stresses an indigenous population's need for cultural protection and their ties to their territory as original occupiers of the land.

The International Labour Organization (ILO) has played a prominent role in formulating a definition of indigenous peoples and their rights. The ILO Convention on the Indigenous and Tribal Populations, 1957 (Convention No. 107) remains the international community's first attempt to comprehensively address the needs of indigenous peoples and tribal peoples. The Convention defines both tribal and indigenous peoples. Article 1 (a) states that tribal are those people *“whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community”*.⁹ On the other hand, Article 1(b) defines indigenous peoples as those *“who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”*¹⁰ The Convention puts self-identification as indigenous or tribal as a fundamental criterion for determining such groups.¹¹

⁹See the Convention at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

¹⁰Ibid.

¹¹Art. 1(2) of the Convention.

Article 3 mandates the adoption of special measures *“for the protection of the institutions, persons, property and labour of these populations”*. One of the main shortcomings of the Convention is its assimilationist approach towards indigenous peoples. For example, Article 12 declares that indigenous peoples may be dispossessed of their ancestral territories *“for reasons relating to national security, or in the interest of national development”*.

With the growing dissatisfaction and criticism of this Convention, another treaty on indigenous peoples in 1989 was adopted, ILO Convention No. 169, which put emphasis on the *“improvement of the conditions of life and work and levels of health and education of indigenous peoples (Article 7(2))”*. The Convention does not define who indigenous and tribal peoples are; it takes a practical approach and only provides criteria for describing the peoples it aims to protect. Self-identification is considered a fundamental criterion for the identification of indigenous and tribal peoples. Article 1 of the Convention states it applies to tribal and indigenous peoples, identifying a set of criteria that defines them. Article 1(a) identifies tribal peoples as communities *“whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.”* On the other hand, indigenous peoples are identified as those:

*who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.*¹²

Thus, indigenous peoples must have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories. This is a fundamental criterion that distinguishes indigenous peoples from tribal peoples.

Other international institutions have also attempted to define indigenous peoples. The World Bank, for example, has adopted a functional approach in defining indigenous peoples, rejecting the criteria-based approach of historical continuity and colonialism. It has taken a pragmatic view of indigenous peoples as groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process.

From the above discussion, it is clear that indigenous peoples can be defined as a group of peoples who share common characteristics and cultural and social worldviews that distinguish them from other population groups. Thus, defining indigenous peoples only in terms of pre-existing or historical continuity is increasingly rejected by recent trends of international law.

¹²See Convention concerning Indigenous and Tribal Peoples in Independent Countries (entry into force: 5 Sep 1991), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169#A1

5. Rights of Indigenous Peoples under International Law

Among the strategies for the survival and international legal protection of indigenous peoples, human rights discourse is considered the most important one for empowering them and enabling them to express their legitimate demands.¹³ The need for a special regime of indigenous rights is due to indigenous peoples' need for special legal protection and for institutions to protect them within the nation state and the international community. Moral and ethical aspects of human rights discourse dictate that indigenous peoples should be portrayed as groups of human beings with fundamental human rights as well as special kinds of rights as remedial measures for historical reasons. The current norms of indigenous rights merely establish the benchmarks for ensuring the minimum range of choices of rights to which indigenous peoples are entitled in remedial-constitutive settings in the governing institutional order.¹⁴

The philosophical justification of recognizing rights of indigenous peoples can be attributed to the fact that indigenous peoples' rights are pre-existing rights in that they are not derived from the legal systems of the states, but arise *sui generis* from the historical conditions of indigenous peoples as distinct societies with the aspiration to survive as such. In other words, indigenous peoples enjoyed nationhood prior to their subjugation by colonial powers or settlers, and their statehood and sovereignty enjoyed under a nation state predate the modern nation states that now assert sovereignty over them.¹⁵

¹³Williams, 1990: 664.

¹⁴Anaya, 1994: 309 and 342.

¹⁵Anaya, 1994: 309 and 34.

The ILO Convention on the Indigenous and Tribal Populations adopted in 1957 (Convention No. 107) remains the international community's first attempt to comprehensively and specifically address the needs of indigenous and tribal peoples. Bangladesh has ratified this Convention. However, due to the dissatisfaction and widespread criticism of the assimilationist approach of the Convention, ILO adopted another treaty on indigenous peoples in 1989, which was very comprehensive. The preamble to the Convention No. 169 recognizes "the aspiration of these indigenous peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions within the framework of the States in which they live." However, Bangladesh is yet to ratify ILO Convention no. 169.

Heightened awareness of environmental degradation and destruction of the land and ecosystem of the indigenous peoples and increased publicity focusing on the continuing disrespect for the environment where indigenous peoples live have provided further ground for establishing the norms for indigenous peoples' rights. As a result, indigenous peoples are also protected by international environmental law, and environmental protection has become a part of the agenda for indigenous peoples' rights.¹⁶

¹⁶Kastrup, 1997: 106.

Traditional human rights norms have been irrelevant, to a large extent, for the protection of rights of indigenous peoples as these do not address the concerns of vulnerable or special groups of people.¹⁷ Consequently, it is essential to construct and affirm a distinct program of “rights of indigenous peoples”, going beyond universal human rights and existing regimes of minority rights.¹⁸

The United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, however, contains no explicit definition of indigenous peoples; rather, it provides a catalogue of rights for indigenous peoples as a set of special group rights. It adopts both defining elements – historical continuity or pre-colonial context, and the functional approach of a distinct social and cultural identity from the dominant society.

Under the United Nations Declaration, with the exception of basic civil, political and social, economic and cultural rights under universal human rights instruments, indigenous peoples are entitled to the following category of distinct rights or group rights.

Right to Self-Determination

The right to self-determination as an irreducible minimum encompasses the right of all ethnic and indigenous communities to continue to exist.¹⁹ The right to self-determination refers to political, economic and social

¹⁷<http://alojamientos.us.es/mhrd/MatKingsburyPGV.pdf>

¹⁸Kingsbury, 2001: 71-72, 102.

¹⁹Naqvi, 1996: 726.

self-determination, which are necessary for both internal autonomy and external sovereignty. While most states are willing to concede some degree of control over indigenous affairs, such as the power to administer special programs designed by the state, they will not generally recognize self-determination claims involving secession.²⁰ Therefore, instead of independence, the prevailing trend is towards granting the right to autonomy to the indigenous peoples in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment.²¹ For indigenous peoples, the right to self-determination is currently understood as having internal autonomy in terms of their right to existence as a separate entity. The United Nations Declaration on the Rights of Indigenous Peoples recognizes self-determination as one of the fundamental rights and expresses it in the following terms: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3)." Articles 4 and 5 of the Declaration elaborates on the right of self-determination as the right to autonomy, or self-government, in matters relating to their internal and local affairs, and right to maintain their distinct political, legal, cultural, economic and social institutions.

²⁰Torres, 1991:127, 162.

²¹See also Lawrey, 1990: 703.

Rights to Lands and Livelihoods

The importance of lands and resources to the survival of indigenous cultures is also widely acknowledged in the United Nations Declaration on the Rights of Indigenous Peoples. Article 25 of the Declaration provides that *“indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”*

Right to Legal and International Personality

Since indigenous peoples have to live in a state, and the State may deny their rights, it is essential that they be attributed an international personality under a national and international legal framework so that they can present their claims and grievances in arenas outside the national legal system. The United Nations Declaration on the Rights of the Indigenous Peoples is silent on this issue. However, it recognizes that indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions, while indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the states in which they live (Article 33). The recognition of indigenous peoples' citizenship and their entitlement of state citizenship can enable them to espouse their claim in international organizations and forums.

Right to Cultural Integrity

The cultural rights of indigenous peoples include respect and protection of cultural and religious integrity, preservation of sacred sites, and respect of their spirituality, language and traditional ways of life. Cultural rights are at the core of many other rights. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) affirms that those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.²² In addition, Articles 11, 12 and 13 of the United Nations Declaration on the Rights of the Indigenous Peoples are particularly concerned with the cultural rights of indigenous peoples. According to Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples:

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

²²Anaya, 1994: 309, 343.

Right to Compensation

Right to compensation has been asserted as one of the distinctive rights of indigenous peoples;²³ however, it appears to be the most controversial right. The emerging norms related to the right to compensation suggests that this right should only be extended to the consequences of future actions of the government or state agency or donor agency, rather than for past or historical injustices committed against them. Under Article 28 of the Declaration, indigenous peoples have the right to restoration of the lands, territories and resources that they have traditionally owned or otherwise occupied or used, but have been confiscated, occupied or used without their free and prior consent. But where restoration is not possible, they have the right to just and fair compensation for such lands.

Right to Participation in Decision-Making Processes

The right to participation of the indigenous peoples in development projects and decision-making processes is an evolving human right.²⁴ This right requires that indigenous peoples be consulted by the government, donor agencies and multinational companies if any development project or mineral exploration is carried out in their lands that may have negative effect on their survival.²⁵ The right to participation of indigenous peoples in decision-making processes with respect to resource development and other development projects has been implicitly recognized in several articles of the United

²³Nettheim, 1988: 116.

²⁴See details on the rights of indigenous peoples to participation with respect to resource development, in Triggs, 2002: 123-154

²⁵See Triggs, 1993: 394.

Nations Declaration on the Rights of Indigenous Peoples. Article 17 provides that States shall, in consultation and cooperation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education; Article 18 recognizes that indigenous peoples have the right to participate in decision-making in matters that would affect their rights and the right to maintain and develop their own indigenous decision-making institutions; and Article 19 categorically states that indigenous peoples shall be consulted before adopting legislative or administrative measures that may affect them.

The Individual and Collective Right Not to be Subjected to Genocide

Indigenous peoples have been subjected to genocide committed by colonizers and settlers or other non-indigenous groups. As a result, the international community reached a consensus through Articles 7 and 8 of the Declaration, which provides that indigenous peoples have the collective and individual right not to be subjected to genocide or forced assimilation including the prevention of and redress for any action with the effect of dispossessing them from their lands, territories or resources.

Right to Protection of Indigenous Knowledge

The indigenous peoples around the world maintain their own knowledge system covering a wide range of fields including cultural, religious, health and agricultural practices. Since they are the most vulnerable segment of any society, the Declaration specifically recognizes the right to the protection of indigenous knowledge. Article 31 states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.

6. Issue of Constitutional Recognition of Indigenous Peoples of Bangladesh

The issue of constitutional recognition of indigenous peoples in Bangladesh, raised by indigenous peoples and civil society, has recently attracted considerable attention and generated debate. The main thesis of this demand rests on the argument that indigenous peoples should be recognized in the Constitution by virtue of their being indigenous. However, many argue that this demand is contentious, largely because it is incompatible with the concept of equality of rights. Debate concerning recognition of indigenous peoples takes place within the context of the continuing oppression of indigenous minorities within the modern states. In fact, constitutional recognition is considered a valuable tool for promoting and

protecting the rights of indigenous peoples. Constitutional and legislative measures are frequently used as means for adopting affirmative action policies and programs, which are particularly beneficial to indigenous groups. The legislative and constitutional mechanism is also important for promoting international human rights norms relating to indigenous peoples, since they can only be implemented at the national level through their incorporation as laws in the constitution. Indeed, recognition of indigenous peoples' rights is an essential element of a democratic and plural society, not an exception.

Over the last decades, many countries have either reformed their constitution and/or laws, or adopted new legislation for conferring rights to indigenous peoples in the form of affirmative action and implemented international norms. For example, the Constitutions of Argentina (1994), Brazil (1988), Columbia (1991) and the Russian Federation (1995) expressly recognize indigenous peoples and grant human rights to them under international law. In Canada, indigenous rights are protected in section 25 of the Canadian Charter of Rights and Freedoms, 1982. The Constitution of the Bolivarian Republic of Venezuela, Article 77 establishes the principle of special protection for the indigenous peoples in order to facilitate their inclusion in the life of the nation. In Guatemala, the 1995 United Nations-supported Agreement on Identity and Rights of Indigenous Peoples establishes the State's obligation under the Guatemalan Constitution to give special protection to cooperative, communal or collectively held lands. The 1975 Constitution of Papua New Guinea recognizes the customary laws of the various indigenous groupings as binding parts of the national legal system.

It is evident that constitutional and legislative measures are recognized as important means for protecting and promoting indigenous peoples' right in many parts of the world, and many states provide special developmental programs for indigenous peoples.

In Bangladesh, many indigenous communities have been living in the country for centuries. The Constitution of Bangladesh has already granted preferential treatment to the underprivileged segments of the population, which also includes indigenous peoples or ethnic minorities. The granting of recognition of indigenous peoples as a distinct people in the Constitution of Bangladesh serves as a confidence-building measure between mainstream society and indigenous communities. Furthermore, it will afford greater protection to their rights and interests. The constitutional recognition of indigenous peoples will also facilitate the development of their own communities and cultures within a state formation, and will be a useful instrument to prevent the colonizing tendency of dominant cultures.

According to four criteria of identification of indigenous peoples under the ILO Convention 169, the people living in the CHT and the ethnic minority community in the plain lands of Bangladesh can be defined as indigenous peoples because they: have distinct traditional lifestyles, culture, religions, creeds, and livelihoods that are different from the other segments of the national population; have separate social organization and political institutions; have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories; and consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them.

They also differ markedly from the Bengali majority in language and physical appearance. Although indigenous peoples have not been granted constitutional recognition, they increasingly identify themselves with the Bengali term, *adibashi*, which refers to a heterogeneous set of ethnic and tribal groups claimed to be the aboriginal population of India.²⁶

It is a historical fact that the indigenous peoples of Bangladesh settled in the territories or areas they now live in prior to the arrival of the Bengali citizens. There is no historical evidence of indigenous peoples having forcibly occupied any territories within the current borders of Bangladesh by ejecting Bengali people. For example, the Khumi and Chak people claim to be only indigenous to Bandarban Hill District. Similarly, the Munda and Oraon claim to be indigenous to northwest Bangladesh in the *Barind tract* (locally known as 'Borendro Bhumi') within Rajshahi Division. Moreover, tribal peoples have a distinct culture, their own laws and system of governance; for example, the Karbhari and Headman regulate their everyday life.²⁷ It should be noted, however, that the Peace Accord does not mention the term 'indigenous peoples' but has recognized these people as 'tribal'.

The 15th Amendment to the Constitution of The People's Republic of Bangladesh has made a significant advancement in recognizing these people as tribal people, a small ethnic group, or an ethnic community or entity. Article 23A of the Constitution states that the State shall take measures for the

²⁶<http://opinion.bdnews24.com/2013/12/27/indigenous-roots-of-bengali-culture/>

²⁷<http://bit.ly/1qMxM8w>

preservation and development of the unique local culture and traditions of the tribal people, small ethnic group or ethnic community. Thus, the recent amendment has not recognized them as indigenous peoples. Interestingly, the newly adopted Article 6 of the Constitution of Bangladesh, which deals with citizenship in Bangladesh, states that the people of Bangladesh as a nation shall be identified as Bangalees, and its citizens shall be identified as Bangladeshies. Thus, the expression 'peoples of Bangladesh' only includes Bangalees and excludes other ethnic groups. Articles in the Constitution contradict each other. Therefore, the indigenous peoples are Bangladeshies, but not Bangalees.

The demand for the constitutional recognition of indigenous identity is based on a number of premises: indigenous peoples have distinct culture, beliefs, traditional lifestyle and religion; the term, 'adibasi' and its English equivalent, 'indigenous' and 'aboriginal' have been used in several Bangladeshi laws, policies, judicial decisions and statements of Bangladeshi heads of governments.²⁸ The term 'indigenous' has been used in a number of laws and programs, including the Chittagong Hill Tracts Regulation of 1900, the State Acquisition and Tenancy Act, 1950; the Small Ethnic Groups Cultural Institutes Act of 2010, and the Poverty Reduction Strategy Paper of 2010. For example, the State Acquisition and Tenancy Act of 1950 recognizes special rights of the indigenous peoples relating to their lands. Section 97 of the State Acquisition and Tenancy Act, 1950 imposes restrictions on the transfer of lands of indigenous peoples through sale, purchase, gift and inheritance to other communities.

²⁸Quader, 2008.

The official position of the Government of Bangladesh is still opposed to the recognition of indigenous peoples in the Constitution and it prefers the terms 'tribe' and 'tribal' ('upajati' in Bangla) to the terms 'indigenous' and 'adibasi'. Additionally, in 2011, the government ministers stated that there were no indigenous peoples in Bangladesh, which shows the lack of support for the recognition.

The Peace Accord is silent on the issue of their recognition as indigenous peoples. In fact, the Peace Accord never mentions the word 'indigenous peoples.' Bangladesh is yet to ratify ILO Convention No. 169 and to protect the rights of indigenous peoples and religious minorities. According to Jyotirindra Bodhipriya Larma, Chairperson of the CHT Regional Council, the implementation of the Peace Accord to realize the rights of tribal or indigenous peoples is more important than their constitutional recognition.²⁹

7. The Peace Accord and its Implementation Status

Preserving the Special Character of the CHT region

The Peace Accord envisages that the CHT shall be treated as the 'Tribal Inhabited Region' and recognizes the need to protect this character and attain the overall development of this region. The Government and the elected representatives shall strive to uphold the characteristics of tribal creed and culture. According to the Peace Accord, the Government shall patronize and support the cultural activities of the tribes for their development.

²⁹Interview with Jotirindra Bodhiprio Larma, 11 July 2013.

The special status of the CHT was confirmed in the Chittagong Hill Tracts Regulation, 1900 (or the Chittagong Hill Tracts Manual), which preserved the culture, heritage, land rights and special lifestyle of the tribal communities. It declared the CHT as an exclusive area outside the regular administration. Migration of outsiders to the plain lands was strictly controlled and these communities were forbidden to own land. The manual was approved by the Government of India Act, 1935. It was also approved by the 1956 Constitution of Pakistan. The CHT was declared a Tribal Area, and the Peace Accord reiterated this earlier position on CHT as a special area.

In order to maintain this special character of the region, some steps have been taken by the Government, such as the enactment of the Chittagong Hill Tracts Regional Council Act and the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001, as well as the continuing role of the traditional chiefs and headmen in the administration of the region.³⁰ The Government set up three Small Ethnic Groups Cultural Institutes in the three hill districts. However, no other significant steps have been taken by the Government to protect the special character of the CHT region. And yet, the continuing influx of Bengali settlers in the region, illegal land grabbing, inclusion of the Bengali settlers and non-indigenous outsiders in the voter list, issuance of permanent resident certificates by the District Commissioner and the provision of employment and other opportunities including lease and settlement of land to Bengali settlers are destroying the special character of the region.³¹

³⁰Roy, 2000.

³¹Baer, 2011.

Adoption of Laws and Regulations

The Peace Accord requires the Government to enact new laws and the amendment of existing laws, regulations and practices to comply with the Peace Accord on the basis of recommendations of the CHTRC. In line with this provision of the Peace Accord, the Government passed the Chittagong Hill Tracts Regional Council Act of 1998, the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001 and the Chittagong Hill Tracts Regulation (amendment) Act of 2003. However, no changes have been made in the Voter List Ordinance, 1982, the CHT Manual of Regulation of 1900, the CHT Development Board Ordinance, 1976, the Forest Act, 1927, the Union Parishad Act, and the Upzilla Parishad Act to make these laws consistent with the Peace Accord. The Government set up the Regional Council and three Hill District Councils to implement the Peace Accord.

Implementation Mechanisms of the Peace Accord

The Peace Accord provides that an Implementation Committee with the following members shall be formed to monitor the implementation process: (i) a member to be nominated by the Prime Minister; (ii) the Chairperson of the Task Force on Rehabilitation of Returnee Refugees; and (iii) the President of PCJSS. The Peace Accord Implementation Committee was formed in 1998. There was no such committee during the tenure of the four party alliances and the military-backed Caretaker Government (2007–08). The Committee was re-constituted by the current Government in 2009 with Sajeda Chowdhury, the Deputy Leader in the Parliament, as its Chairperson. The Committee has held only a few meetings since then. This Committee has remained largely ineffective.

A major weakness of the structure of the Committee is that, while it includes the parties to the Peace Accord, it is not independent from them. Thus, the presence of an independent third party, to arbitrate and/or mediate enforcement, was not provided in the Peace Accord.³²

The National Human Rights Commission of Bangladesh should be actively involved in the implementation of the Peace Accord as an independent body. The implementation mechanism needs to be revised and made effective by incorporating more members from civil society. It should be given more authority to supervise the implementation of the Peace Accord.

There are other bodies such as the Advisory Committee of the Ministry of CHT Affairs set up after the Peace Accord as an oversight body for public and administrative institutions in the CHT and the Parliamentary Standing Committee on CHT Affairs.

Chittagong Hill District Council

The Hill District Council Acts of 1989 established three identically empowered councils at the district level. The Hill District Council Acts were amended in 1998, in accordance with the provisions of the Peace Accord, whereby the councils were provided more authority and autonomy than before through an increase in the number of subjects transferred to their authority. According to the Peace Accord, the Hill District Council should consist of 34 members. However, the election of the Hill District is yet to be held. The rules for electing the council Chairperson and members of Council have not yet been formulated, and the voter list has not yet been created. As a result, currently, interim Hill District Councils consisting

³²Roy, 2012.

of five members do not have anyone to answer to. Furthermore, the Rules of Business of the Hill District Council are yet to be adopted. The disaster management and relief operation in the CHT is still controlled by the District Commissioners rather than by the Hill District Councils.

Autonomy of the Hill District Councils

The Peace Accord has many provisions for granting autonomy to the Regional and District Council regarding the creation and appointment of officers and other staff members. For example, Article 1 provides that the Hill District Council may, with the approval of the Government, create posts of various categories of officers and employees. The Council can appoint class three and class four employees, and in case of such appointments, the priority shall be given to indigenous inhabitants. This provision has been incorporated in the Hill District Councils Acts but has not been executed fully. It was also provided in the Peace Accord that the Government can, in consultation with the Council, appoint officers to other posts. But the Government never consults the Councils before making such appointments. As a result, the officials and employees of the district- and *upazila*- (sub-district) level administration are predominantly non-locals and non-indigenous people.

Part B, Article 24 of the Peace Accord provides that the Hill District Police force in the rank of Sub-Inspector and below such rank shall be appointed by the Council. This provision is also yet to be executed. The police are still controlled by the Government. The provision of the Peace Accord gives priority to tribal peoples in the appointment to the local police forces. However, this provision has not yet been executed; its implementation is crucial for confidence building in the region.

Part B, Article 13 of the Peace Accord provides that a chief executive officer equivalent to the status of a deputy secretary shall be the secretary in the Council, and the tribal officials shall be given priority for this post. However, few chief executive officers in the Hill District Councils have been drawn from the tribal community since the inception of Hill District Councils in 1989.

According to Part B, Article 19 of the Peace Accord, the Hill District Council is empowered to utilize government funds to prepare and implement development projects on any issue under the responsibility of the Council, and all development programs adopted at the national level shall be implemented through the Hill District Council by the concerned ministry or department. However, this provision of the Peace Accord has not been properly incorporated in the 1998 Hill District Council Act.

According to the Peace Accord, the Council shall be responsible for the collection of the Land Development Tax in each District, which shall be deposited in the Council's fund. However, this power is still exercised by the Deputy Commissioners of the three Hill Districts, and the fund collected is deposited with the accounts of the district administration.

Violation of the above provisions of the Peace Accord seriously undermines the autonomy and self-government of the Hill District Council.

Land Rights

Tribal peoples in the CHT are still deprived of their land and access to life-sustaining resources. Governments are often reluctant to formally recognize indigenous rights to land.³³ Land has deep cultural and spiritual meaning in most indigenous societies and in their social organization. An important dimension in affirming indigenous rights is the exercise of a measure of autonomous control over their lands, territories and resources through their own institutions. Therefore, the indigenous peoples' right to land in the form of control and decision making concerning development, use of natural resources, management and conservation is considered an essential aspect in exercising their internal self-determination.³⁴ Their land rights should be interpreted in the broader sense to include their right to demarcation, ownership, development, control and use of their lands by traditional methods.

Protection of land rights of indigenous peoples remains the fundamental issue in the Peace Accord considering that indigenous peoples have lost and are continuing to lose their ancestral lands at an alarming rate as a consequence of forced eviction from, and expropriation of, their lands through development projects.³⁵ There is a popular perception that CHT contains abundant arable land for cultivation and human habitat, which led to the migration of large numbers of Bengalis in the CHT. This trend still prevails. However, this perception is

³³Ganz, 1996: 173.

³⁴Daes, 1999: 11, 21.

³⁵Baer, 2011

a misconception because most of the areas are hilly and cannot support the density of a population such as that in the plain lands of Bangladesh. Article 26 of the Peace Accord provides that no land and premises including the leasable khas (state-owned) lands within the territorial boundaries of the Hill District shall be transferable by lease, settlement, purchase or sale without prior approval of the Council. But this provision shall not be applicable in areas within the Reserved Forests, the Kaptai Hydroelectric Project, the Bethbunia Earth Satellite Station, state-owned industries and factories, and lands registered in the name of the Government.

However, the authority over the land management has not been transferred to the Hill District Councils. Part B, Article 26 of the Peace Accord provides that no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the Government without consultation and consent of the Hill District Council. Except in a few cases, this provision is not implemented fully. On the other hand, three District Commissioners are acquiring and transferring land through lease as per the 1900 CHT Regulation. Thousands of acres of lands have been acquired by carrying out of afforestation programs, setting up satellite villages, army camps and training centers in different areas of the CHT. In Bandarban District, for example, lands have been transferred to settlers or non-resident Bengali peoples for rubber plantation, forestation, and fruit gardens through long-term leases. As a result, many tribal peoples are becoming landless and evicted from their habitat. The Government has already acquired 11,445.45 acres in Sualok to establish an Infantry Training Centre.³⁶ More lands are

³⁶See An Audit on the Implementation of the CHT Accord, available at www.barc-bd.org/all_document/Implementation_CHT_Accord.pdf

being acquired: 19,000 acres in Sualok for an Infantry Training Centre, 9,560 acres in Ruma for the Para Commando and Aviation Training Centre, 181 acres for the expansion of the Bandarban Brigade, 5,500 acres in Chimbuk for the Eco-Park and Army Tourism Centre, 2,600 acres in Bandarban-Lama for the Air Force Training Centre, and 50 acres of land for the expansion of Longadu Military Zone without any prior consent, either from the Hill District Councils or from the CHT Regional Council as stipulated in the Peace Accord.³⁷ To date, 11,445.45 acres of land have already been acquired in the Bandarban Hill District for the Artillery Training Centre, violating the conditions of the Peace Accord.³⁸ According to a study, around 22 per cent of indigenous households have lost their lands. The Chakmas are those who are mostly affected by land dispossession (41%), followed by the Tanchangya (22%).³⁹

According to the Peace Accord, fringe land in Kaptai Lake shall be given as a settlement on a priority basis to the dispossessed owners of land.⁴⁰ However, this provision has not yet been implemented.

³⁷Ibid.

³⁸Ibid.

³⁹Abdul Barkat et al., 'Socio-Economic Baseline Survey of Chittagong Hill Tracts', UNDP, Dhaka, 2009.

⁴⁰Article 26 (D) of Part B of the Peace Accord.

Devolution of Powers

The Peace Accord provides for transferring control over 33 subjects or areas of governance to the Hill District Councils. The main transferred subjects include:

- a. Land and land management
- b. Police (local)
- c. Tribal law and social justice
- d. Youth welfare
- e. Environment preservation and development
- f. Local tourism
- g. Improvement trust and other local government organizations except Pourasabha and Union Councils
- h. Licensing for local trade and business
- i. Proper utilization of water resources of rivulets, canals, ponds except Kaptai lake and irrigation systems;
- j. Preservation of death, birth and other statistics
- k. Money lending and trade
- l. Jhum cultivation
- m. Levying of taxes, rates, tolls, and fees on certain matters.⁴¹

However, to date, only 12 subjects have been transferred to the Hill District Council: the Agricultural Department, the Health sector, the Primary Education sector, the Industry and Commerce sector, the Cooperative Department, the SocialWelfare Department, the Fisheries

⁴¹See Article 34 of the Accord, which is available at www.chtdf.org/index.php/cht-issues/peace-accord

Department, the Livestock Department, Public Health Engineering, the Culture Department, the Youth Development Department and Sports.⁴² However, vital subjects such as land management, local police, levying and collection of taxes, development and conservation of forest not reserved by the Government and local tourism have not been yet transferred. Although vocational education has been transferred, secondary education is yet to be handed over to the Hill District Council, and no initiative has been taken to provide primary education in indigenous languages. However, subjects are not being transferred in the same manner and the same pace in the three Hill Districts.

In addition to the 12 subjects, on 8 November 2012, the Government of Bangladesh transferred five different departments under various subjects to the three Hill District Councils, such as the Public Health Engineering Directorate and the Health and Family Welfare Departments, the Bangladesh Agriculture Development Corporation (under the Bangladesh Agriculture Extension Department), the Cotton Development Board in Khagrachhari Zone (under the Bangladesh Agriculture Expansion Department), Ramgarh Hatchery Farm (under the Fisheries and Livestock Department) and Government Child Homes (Shihu Sadan) (under the Social Welfare Department). However, these Departments were transferred under the subjects that were already transferred earlier to the Hill District Councils under the provision conferred in the three Hill District Council Acts, 1989.

⁴²<http://www.chtdf.org/index.php/cht-issues/peace-accord>

Non-implementation of the provisions relating to transfer of subjects is seriously hampering the autonomy and self-government character of the Hill District Councils as envisaged in the Peace Accord.

Article 26 (c) of the Peace Accord provides that the Councils can supervise and control functions of Headman, Chairman, Amin, Surveyor, Kanungo and Assistant Commissioner (land). However, to date, the Councils have not officially been invested with any such power. The election of the Hill District Councils is yet to be held, and a voter list with only the permanent residents of the CHT, to be certified by the Circle Chiefs, is yet to be prepared for the election of Hill District Councils. Due to a lack of elected representatives, the Hill District Councils cannot function effectively and contribute to the overall socio-economic development in the region. However, electing the Hill District Council can ensure proper representation of all tribal communities in the Councils, which is vital for democratic governance in the region.

The Regional Council

The Peace Accord introduces a special governance arrangement for the CHT with the formation of the CHT Regional Council as an apex political body of the region. In the Regional Council, the chairperson and two thirds of the seats are to be reserved for indigenous peoples, and one third of the seats are reserved for permanent Bengali residents. The Regional Council, comprising the local government councils of three Hill Districts, shall be formed for the purpose of making the Hill District Council more powerful and effective. The Regional Council consists of 22 members including the

chairperson. The status of the chairperson of the Regional Council is equivalent to that of a state minister, and shall be an indigenous person elected indirectly by the elected members of the Hill District Councils. Three seats shall be reserved for women in the Council, one third of which shall be for non-tribal women. The Council members shall be elected indirectly by the elected members of the three Hill District Councils. The three Hill District Council chairpersons shall be the *ex officio* members of the council with the right to vote. However, elections for the representatives of the Regional Council could not be held because elections for the three Hill District Councils were not held.

The main functions of the Regional Council, according to Article 9 of the Peace Accord, include the supervision and coordination of the activities of all transferred subjects under the three Hill District Councils: law and order, general administration, development programs, the activities of the CHT Development Board, coordination of NGO activities, disaster management and relief operations, traditional and social justice, as well as the issuance of licenses for heavy industries.

The Regional Council cannot carry out its functions of coordination and supervision because the Rules of Business of the CHTRC are yet to be finalized by the Government. The Regional Council also lacks manpower and logistic support. The Regional Council is also not consulted by the Government when development projects are undertaken in the region. For example, when the process of establishing a fertilizer industry in the CHT and installation of two more units in the Kaptai Hydroelectric project were in progress, the CHTRC was not consulted. Furthermore, the supervision of activities of the CHT Development Board is yet to be transferred to the Regional Council.

In addition, according to section 32 (1) of the CHT Regional Council Act, 1998, the Regional Council should have its own fund, the CHT Regional Council Fund. However, this fund has not yet been established due to the lack of necessary government instruction on the collection of taxes, tolls or other sources. The Council also cannot formulate its own annual budget because it lacks its own fund.

Consultation with the Regional Council

Article 29 of the Peace Accord provides that the Government may, upon consultation with the Regional Council, make rules for the Hill District Councils. This provision has been amended and included in the Hill District Council Acts, but the Government is yet to make rules applicable to the Hill District Council.

Article 11 states that the Chittagong Hill Tracts Regulation of 1900 and other related acts, rules and ordinances, if found inconsistent with the Hill District Council Acts of 1989, shall be removed by law as per the recommendations of and in consultation with the Regional Council.

Article 13 of the Peace Accord states that in making any law regarding the Chittagong Hill Tracts, the Government shall consult with the Regional Council. If it becomes necessary to amend any such law or to make any new law, which might have an adverse effect on the development of the three Hill Districts and the welfare of the tribal peoples, the Council shall be competent to file a petition or submit recommendations to the Government.

Although Article 13 of the Peace Accord was incorporated into the CHTRC Act, this legislative prerogative of the CHTRC is never applied, especially regarding such laws that are exclusively intended to deal with the CHT issues. However, it is alleged that the Government, at times, without consulting the CHTRC, passes national laws that are applicable to the CHT without taking the CHT perspective and its distinctive character into account. For example, the Government introduced the Speedy Trial Act 2003, the Women and Child Repression Act 2003 and the Small Ethnic Groups Cultural Institute Act 2010 in the CHT without consulting the CHTRC. Enacting and introducing laws without insight and understanding of the context may prove disastrous for the people for whom the laws are intended.

Rehabilitation, General Amnesty and Other Issues

The Land Disputes Settlement Commission

In order to resolve land disputes, Article 4 of the Part D of the Peace Accord provides that a Land Commission headed by a retired justice shall be constituted and shall have full power to cancel ownership of those hills and lands that have been so far illegally settled and occupied. No appeal can be made against the judgment of this Commission, and its decision shall be final. This shall also be applicable in case of fringe land.

The Commission shall comprise the following members:

(i) a retired justice; (ii) a Circle chief; (iii) a Chairperson/representative of the Regional Council; (iv) a Divisional Commissioner/Additional Commissioner; and (v) a Chairperson of the concerned District Council. The tenure of office of the Commission shall be three years.

The first Chairperson of the Land Commission was appointed in 1999. The Land Dispute Settlement Commission Act was adopted in 2001. Many criticisms are leveled against the Act by the tribal peoples on the ground that many provisions of the Act are not consistent with the Peace Accord. The Rules of Business of the Land Commission are yet to be adopted for proper functioning of the Commission. The Land Commission was ineffective from its inception until it was reconstituted in 2009 with the appointment of retired Justice Khademul Islam as its Chairperson. For example, until 2009, meetings of the Commission were not convened as per the provision of the Peace Accord.

Article 2 of Part D, of the Peace Accord clearly provides that a cadastral land survey shall be carried out in CHT as soon as possible and after finalization of land ownership of tribal peoples by settlement of land dispute through proper verification, and that their land should be registered to ensure their land rights. However, according to the Peace Accord, this survey shall be carried out only after implementation of the Peace Accord and rehabilitation of returnee refugees and IDPs, and in consultation with the Regional Council. The chairperson of the Commission made a unilateral decision to conduct land survey in the CHT without consultation of the tribal

peoples and before resolving the land disputes, which was a clear violation of the provision of the CHT Accord. In the context of huge protests from the tribal peoples, the decision was scrapped. The main apprehension of the tribal peoples was that those currently occupying tribal peoples' land would be illegally recorded as the possessors and eventually as title owners, while the displaced communities would be excluded from the survey records.⁴³

The Land Commission Chairperson's post has been vacant since 20 July 2012. The Land Commission also lacks the necessary manpower and logistic support to carry out its functions.

Part C, Article 6 (b) of the Peace Accord provides that the Commission shall resolve the disputes in line with the law, customs and practices in force in the CHT. However, the Land Commission Act contains only "existing laws and customs" and excludes the word "practices". Yet no steps have been taken to date by the Government to identify the customary laws and practices in force in the CHT. The Land Commission failed to settle any land dispute in the CHT and was perceived to have worked against the interests of the indigenous peoples.

After assuming state power by the Awami League-led Grand Alliance, the CHTRC sent the 19-point recommendations for amendment of the contradictory provisions of the CHT Land Dispute Resolution Commission Act 2001 to the Government. Since its establishment, the Commission has remained non-functional as the Act itself deviates from the structure and functions laid down in the Peace Accord. The discrepancies

⁴³Baer, *supra* note 32.

include jurisdictional area of the Peace Accord and the vesting of near-absolute, veto-like powers upon the Chairperson in case of an absence of consensus among the members.

After several meetings, the Ministry of CHT Affairs, having consulted with the CHTRC, finalized the 13-point amendment proposal of the Act. Recently, the Cabinet approved the draft of the Chittagong Hill Tracts (CHT) Land Dispute Resolution Commission (amended) Act, paving the way for the formation of a five-member Chittagong Hill Tracts Land Dispute Resolution Commission for resolving land disputes in the three hill districts. As per the amended Act, the attendance of the Chairperson and two other members at the meeting shall be necessary for maintaining a quorum, and the Chairperson of the Commission shall preside over all meetings. Majority decision, including those of the Chairperson of the Commission, would be granted under the amended Act.

Section 6(1) (c) of the Chittagong Hill Tracts Land Dispute Resolution Commission Act states:

Any land that has been given in settlement in violation of the existing laws of CHT, shall be cancelled, and if any lawful owner has been illegally occupied on account of such settlement, shall be restored: Provided that, this sub-section shall not be applicable in case of Reserved Forests, Kaptai Hydroelectricity Project area, Betbunia Earth Satellite Station, state-owned industries and land recorded with the Government or local authorities.

The 13-point proposal recommends inclusion within the jurisdiction of the Commission for resolving land disputes relating to reserved forests, the Kaptai Hydro-electricity project area, the Betbunia Earth Satellite Station, state-owned industries and land registered with the Government or local authorities. This excluded area amounts to 40 per cent of the territory of the CHT and remains within the exclusive jurisdiction of the Government.

The proposed amendment to the law states that the lands of the CHT area, which remained illegally occupied and used for the rehabilitation of the refugees in light of the CHT Accord of 1997, will come under the jurisdiction of the Commission. The amendment states that a majority of the five-member Commission including the chairperson can settle the land disputes of rehabilitated refugees in the CHT if a unanimous decision cannot be made. Under this amendment, a unanimous decision is needed to settle the dispute; otherwise, the chairperson of the Commission can make the decision. The amendment also proposes to give priority to the local indigenous peoples while recruiting the manpower for the Commission. The Cabinet instructed the Land Ministry to draft the necessary rules for the implementation of the Act within three months. In addition, under the proposed amendment, the concerned Circle Chief of the CHT, if unable to attend a meeting of the Commission as a member, can send a representative with full authority to give a decision on any issue.

This Amendment Bill of 2013 has not incorporated all the 13-point proposals. The Peace Accord clearly states that all land disputes including those involving refugees shall be addressed by the Commission (Art. 4 of Part D of the Peace Accord.) In addition, there are three important provisions that are missing in the Amendment Bill of 2013. One is related to quorum. Section 7(3) of the CHT Land Disputes Resolution Commission Act 2001 provides for a quorum with its chairperson and two members. However, among the members of the Commission, the Chairperson of the Hill District Council and Circle Chief are directly related to the land management and administration in the CHT. Therefore, in order to ensure the presence of one of them in resolving land disputes, the 13-point amendment proposals recommend a quorum with the chairperson and three other members. However, the Amendment Bill 2013 excluded this important proposal, which may hinder the smooth resolution of the land disputes in the CHT. Another is the provision for inclusion of the function of the CHT Land Disputes Commission in the CHT Affairs Ministry instead of the Land Ministry, which has not been incorporated in the Amendment Bill 2013. It is the CHT Affairs Ministry that has been empowered to deal with all matters relating to CHT affairs. However, the CHT Land Commission has been kept under the jurisdiction of the land ministry.⁴⁴

⁴⁴Chakma, 2013: 7.

Withdrawal of Military Camps

Article 17(a) of the Peace Accord provides that after the conclusion of the Peace Accord, all temporary camps of the army, the Ansars and the village defense party (VDP), except permanent army establishments, shall be withdrawn in phases from the CHT and a time limit fixed for this purpose. However, the armed forces may be deployed under the authority of the civil administration in cases of the deterioration of law and order in the region, in times of normal calamities, and for similar other purposes.

However, no time limit has been fixed for completion of the withdrawal of camps. Continuing presence of the military forces and their influence on the overall administration of the region remain the main psychological barriers to building peace and confidence in the region. According to the Peace Accord, six cantonments were to remain in the three hill districts, and in addition, there are more than 400 temporary camps in CHT. Although the Government points out that 283 military camps have been dismantled from the CHT, the area still remains heavily militarized. The PCJSS estimates that around 74 out of over 400 (temporary) military camps have been withdrawn. However, it is alleged that vacated army camps are taken over by other forces such as Ansar and the Border Guard Bangladesh (BGB) forces.⁴⁵ The carrying out of 'Operation Uttoron', which allows the military to intervene in civil matters beyond their proper jurisdiction, adds to the complexities. No initiative has ever been taken to withdraw the promulgated Operation Uttoron from the CHT.

⁴⁵Interview with Jotirinda Bodhiprio Larma, 11 July, 2013.

Rehabilitation and General Amnesty

The Peace Accord provided for the rehabilitation of indigenous refugees (the India Returnee Refugees, IRR) and internally displaced peoples (IDP), after their identification by a Task Force. However, rehabilitation has not yet been completed, even after 12 years. Around 12,222 families of indigenous refugees with a total of 64,609 persons returned to the CHT from the Tripura State of India.⁴⁶ However, 9,780 families could not return to their own homesteads, farm lands and native villages because they could not be reinstated in their original/rightful lands, which were already occupied by the settlers.⁴⁷

Preferential Treatment

Article 32 of the Peace Accord states that if, in the opinion of the Council, any law made by the Parliament applicable to the hill districts creates hardship for the indigenous peoples, the Council may recur to the Government for amending or relaxing the application of such law, and the Government may take remedial measures in accordance with such applications. Article 10 of the Peace Accord provides for a quota of indigenous peoples in government and semi-government service, and stipend grants for the tribal students in institutions for higher studies until their attainment of parity with other regions of the country.

The Government has a five per cent quota reservation in Bangladesh Civil Service (BCS) for indigenous peoples. The quota in government service is almost filled. Although the provision for quota for admission in higher institutions is implemented now, there is no coherent policy on it, and in some cases, it is completely dependent on the discretion of the authority of the concerned educational institutions.

⁴⁶Study on 'An Audit on the Implementation of the CHT Accord', supra note 37.

⁴⁷Ibid.

Article 9 of Part D of the Peace Accord provides that the Government shall allocate additional funds on a priority basis for the implementation of an increased number of projects towards developments in the CHT, and implement new projects on a priority basis for the construction of required infrastructure for the development of the region. Bearing in mind the environment of this region, the Government shall encourage the development of tourism facilities for foreign and national tourists.

However, the funds allocated by the Government for various projects in the CHT are highly inadequate to make any tangible impact on the indigenous peoples. Moreover, the Government has not yet begun discussions and consultation with the Hill District Council and the Regional Council on tourism management in the CHT, which has yet to be transferred to the Hill District Council.

It is also provided in the Peace Accord that permanent residents of the CHT, subject to priority given to tribal residents, shall be appointed to all posts of officers and employees at all levels of government, semi-government, council offices and autonomous bodies in the CHT. Yet, no steps have been taken to date by the Government for inclusion of this provision in the concerned appointment or service rules and regulations of the ministries to be put into practice in the CHT region.

Cancellation Rubber Plantation and Land Rights

The Peace Accord also provides for cancellation of leases for rubber and other commercial plantations to non-tribal and non-local people in cases where the lands have not been properly utilized for over ten years. To date, this provision is still not implemented.

According to Article 3 of the Part D of the Peace Accord, in order to ensure land ownership of tribal families who are landless or possess less than two acres of lands, the Government shall, subject to availability of land in the locality, give two acres of land per family. In the event of non-availability of required land, grove lands shall be provided. Again, the Government has not yet taken any steps towards implementing this provision.

According to the Peace Accord, the abandoned lands of military and paramilitary forces and cantonments shall be transferred to their original owners or to the Hill District Councils.⁴⁸ This provision has not been fully implemented. In actuality, these lands were transferred to the Upazila Nirbahi Officer (Executive Officer of a sub-district), which violates Article 17(B) of the Peace Accord.⁴⁹

The Ministry of Chittagong Hill Tracts Affairs

The Peace Accord envisages that a Ministry of Chittagong Hill Tracts Affairs will be established by appointing a Minister from among the tribal peoples.⁵⁰ However, this Ministry is unable to exercise its powers and carry out its responsibilities as per the Rules of Business. However, in the successive governments

⁴⁸Article 17(B) of the Part D of the CHT Peace Accord.

⁴⁹An Audit on the Implementation of the CHT Accord , Supra note 37.

⁵⁰See Article 18 of the Peace Accord.

since then, the direct responsibility of the Ministry has been kept under the control of the Prime Minister, and almost all officers in the Ministry are non-indigenous persons. The indigenous ministers for Chittagong Hill Tracts Affairs have since had the status of Deputy Minister or Minister of State, but have not, until recently, been assigned the rank of a full Cabinet Minister.⁵¹

8. Impact of Judicial decisions on Implementation of the CHT Accord

In 2010, the High Court (HC) Division of Bangladesh Supreme Court, in *Mohammad Badiuzzaman v Bangladesh & Others*⁵² declared the Chittagong Hill Tracts Regional Council Act 1998 as well as some provisions of the Hill District Councils Acts unconstitutional. The Peace Accord was also challenged in a separate writ petition, *Advocate Md. Tajul Islam v Bangladesh & Others*.⁵³ Regarding the validity of the Peace Accord, the HC Division observed that since the Peace Accord was political in nature, it could not be reviewed judicially. The HC Division observed that the CHTRC Act 1998 was unconstitutional because it violated the “characteristic of the unitary structure of the state”. In the same way, the HC declared Section 4(6), 17, 32(2), and 62(1) of the Rangamati Hill District Council Act 1989, Khagrachari Hill District Council, Act 1989 and Bandarban Hill District Council Act 1989 as amended in 1998 in accordance with the Peace Accord, stating that the amended provisions violated the “characteristic of the unitary state”. These provisions state that the Bengali settlers must obtain permanent residency certificates from the relevant indigenous chiefs in the region, that non-tribal people cannot vote in council elections, and that positions of class III and IV shall be reserved for indigenous peoples.

⁵¹Baer, *supra* note 32.

⁵²Writ Petition No. 2669 of 2000

⁵³Writ Petition No. 6451 of 2007

However, the Government appealed the decision, and the decision is still pending for its final disposal before the Appellate Division of the Supreme Court.

The judgment has been criticized by experts on many counts. First, the HC division failed to consider the distinct characteristics and administrative background of the CHT. According to the experts, CHTRC formed in 1999 was created as a special administrative unit under Articles 59 and 60 of the Constitution in furtherance of the goals of local government set out in Articles 9 and 11. To protect the special rights of the indigenous peoples in CHT, the CHTRC has been given more power than other administrative units of local government in other parts of Bangladesh.⁵⁴ Such enhanced powers for similar reasons were also earlier given to three Hill District Councils of Rangamati, Bandarban and Khagrachhari under three separate Acts in 1989. The CHT Regional Council basically coordinates the activities of the Hill District Councils.⁵⁵ The CHTRC in no way resembles an organ in a federative unit, e.g. a province in a federal state. It does not violate the unitary characteristic of the State or Government of Bangladesh.⁵⁶ The CHTRC has only been given special territorial jurisdiction and powers as a special administrative unit, for which the Parliament is empowered under Articles 59 and 60.⁵⁷

⁵⁴Alam, 2010: 11.

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Ibid.

The special rights of the indigenous peoples relate mainly to their rights on land. Outsiders are not allowed to settle or occupy lands in CHT without the permission of the Hill District Councils or the CHTRC. This is not an innovation of the Peace Accord; it was long in existence, recognized both by custom and legislation prior to the Peace Accord.⁵⁸ Article 26 of Part B of the Peace Accord is deemed to be legitimate and not to violate equality, equal opportunity and property rights clauses (Articles 27, 29 and 42) of the Constitution. Although there have been allegations that Article 36 on freedom of movement is being violated, in fact, movement to the CHT has not been barred. Obviously, strict control has been imposed on further permanent settlement by outsiders in CHT in order to protect the rights of the indigenous peoples on their own lands in the region.⁵⁹

The exceptions and restrictions have been justified under the Constitution. For example, any reasonable restriction can be imposed on freedom of movement under Articles 36 (2) and 28; the State can make special provisions to protect the interests of any 'backward' class or group of peoples. This also applies to a greater representation of the indigenous tribes enhanced in the Hill District Councils and CHTRC, and to reserving the top posts exclusively for them.⁶⁰

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Ibid.

9. The Legal Nature of the Peace Accord

A negotiated agreement between the indigenous peoples and the state authority in the framework of national and international law remains one of the most important means of implementing indigenous peoples' rights. There are many negotiated agreements. The Peace Accord is a negotiated agreement between the Government and an ethnic minority community. Historically, a negotiated agreement concluded between indigenous peoples and the State as a framework of securing their rights has been regarded as an effective instrument to establish the rights of indigenous peoples. Negotiated agreements provide the opportunity for the parties to accommodate diverse issues and perspectives pertaining to indigenous peoples' rights and their legitimate demands to be considered. James Anaya observes the efficacy of the negotiated agreement as follows:

A process of negotiation that involves good faith dialogue toward achieving agreement helps to build mutual understanding and trust in what might otherwise be contentious and even volatile situations. Good faith dialogue makes it possible to accord to historically aggrieved groups the dignity they need and to identify shared interests and objectives. Negotiation itself may thus help to diffuse conflicts and discourage extreme positions. Moreover, an agreement resulting from good faith dialogue and mutual understanding, and ultimately approved by the relevant constituencies through democratic procedures, is likely to be invested with a substantial sense of legitimacy on the part of all concerned.⁶¹

⁶¹Anaya, 1996:130.

The States generally confer some positive rights through negotiated agreement in the form of affirmative action on indigenous peoples taking into consideration past injustices committed against them.

There is a long history of negotiation to recognize indigenous peoples' rights. For example, negotiation with a view to concluding peace and friendship treaties with Indian nations began in Canada in the 1640s. Land surrender treaties first were entered into in 1790. Although Canada never ceased to exercise sovereignty over these territories in which indigenous peoples lived, it allocated certain rights to native Indian peoples through treaties. A recent example is a negotiated agreement called the Nunavut Agreement, which created a new territory in northern Canada for the indigenous community called the 'Inuit'. In Canada, a negotiated settlement of land claims through the signing of a treaty is a positive and practical measure for achieving desirable goals with respect to the indigenous peoples' relationship to lands and resources.⁶² In New Zealand, the Treaty of Waitangi entered into between the Maori of New Zealand and Great Britain is another example of a negotiated settlement.⁶³ Very recently, a similar peace agreement, the Agreement on the Identity and Rights of Indigenous Peoples, was concluded in Guatemala, in which the United Nations played a crucial role. The Agreement includes far-reaching provisions on indigenous lands, restitution, acquisition of land and other measures.⁶⁴

⁶²Erica-Irene A. Daes, Human Rights of Indigenous Peoples, Second progress report, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Fifty-first session, Item 7 of the provisional agenda, E/CN.4/Sub.2/1999/18. p. 11, supra note 9, pp. 23-24.

⁶³Kawharu, 1990: 255.

⁶⁴Plant, 1996.

Most of the provisions of the Peace Accord were deemed consistent with the provisions of the Constitution of Bangladesh after it was signed.⁶⁵ However, the main provisions of the Peace Accord have been incorporated in the Regional Council Act, and three Hill District Council Acts are amenable to change by the Parliament through a simple majority. The CHT Accord is not constitutionally protected. In order to protect the sanctity of the Peace Accord, the Peace Accord and other laws may be given constitutional protection through their incorporation in the schedule of the Constitution. Moreover, the Regional Council Act has been contested in the judicial system. A 2010 High Court verdict declared the Regional Council illegal since the 'unitary' character of the state, which is one of the basic elements of the Constitution, has been compromised. The Regional Council was consequently declared unconstitutional. The case is now filed at the Supreme Court challenging the verdict made by the High Court. Some of the arguments are that the Regional Council is actually protected by the Constitution since it provides for affirmative action for the 'backward' sections of the population and that the Regional Council is a statutory authority that is mandated with facilitating the different functions of the Hill Districts and is thereby in line with the Constitution.

The Peace Accord occupies a unique position since it is not a creation of Parliament nor an international treaty under the Vienna Convention on the Law of Treaties, 1969. Nevertheless, the Government has the obligation to implement the Accord in good faith since it has voluntarily signed it. One notable weakness of the Peace Accord is the absence of a provision of the settlement of disputes arising out of the implementation of the Peace Accord.

⁶⁵Alam, 1998.

10. The Consequences on Human Rights of Not Implementing the Accord

In the CHT region, due to continuing restrictions on slash-and-burn cultivation imposed by the Forest Department, many indigenous peoples have been displaced and forced to seek alternative livelihoods. Commercial rubber plantation is another source of land grabbing.⁶⁶ The lands of the indigenous peoples are still forcibly being taken away, basically for the establishment of eco-park and national parks, protected and reserved forest, mining activities, military bases and training centers, and development projects as well as the settlement of government-sponsored, non-indigenous migrants. The indigenous peoples in CHT are on the verge of total eviction from their ancestral land where they have been living and practicing slash-and-burn cultivation from generation to generation.

State machineries continue to violate the civil and political rights, and the collective rights of indigenous peoples with impunity, and there is no effective mechanism available for redress in addressing these violations. Numerous cases of human rights violations committed by the state forces are contrary to its national laws and its international human rights obligations.

⁶⁶See report, Chak families in Bandarban, on 15 March 2013. See Dey, 2013: 2.

It is reported that the indigenous peoples of the country are facing gross violations of human rights while the perpetrators enjoy full impunity even after committing crimes such as murder, rape and arson. It is reported that at least eight massive communal attacks were made on the CHT and plain lands. According to Kapaeing Foundation, a rights organization working for the country's indigenous peoples, in 2011, the Bengali settlers in CHT grabbed 7,118 acres of land belonging to indigenous peoples. At times, no investigation or inquiry into the human rights violation is carried out. The complicity of law enforcement agencies in such human rights violations is also reported.⁶⁷ The continuous influx of Bengalis into the three hill districts is putting pressure on the arable land, triggering ethnic clashes and driving away the indigenous community into remote area devoid of minimum civic services. Violent clashes between indigenous and Bengali people have become a daily affair.⁶⁸ However, a culture of impunity prevails in the CHT region, and as a result, many such incidents go unaddressed.

Since the British colonial era, all governments, in the name of development, have been exploiting the Chittagong Hill Tracts' natural resources, depriving the indigenous peoples. The indigenous peoples have never been permitted to participate in the development discourse and the 'major development schemes' have destroyed the environment and brought them misfortune. Many influential people living elsewhere often take out leases on pieces of land in the CHT, contributing to the land dispute there. Inflow of settlers from the plain land has not fully stopped even after signing of the CHT Accord in 1997.

⁶⁷Kapaeing Foundation Report, 2011.

⁶⁸"Chittagong Hill Tracts: Peace Treaty Still to be Implemented," 3 December, 2011, The Daily Star, Dhaka.

The Government has placed restrictions on the movement of NGOs seeking to monitor human rights violations in the area.⁶⁹ Freedom of association and freedom of movement are also restricted in the CHT as a result of many military check posts in the region to control the people's movements. Several discriminatory actions continue to be taken against the indigenous peoples, ranging from land grabbing to physical violence. In 2012, 75 indigenous women and children across the country were subject to violence, of whom 17 indigenous women and children were raped and seven indigenous women killed. Among the victims of violence, 30 were children under the age of 16.⁷⁰ Another development was the furtherance of settlements through the involvement of private agencies and corporate interests, ostensibly for the purposes of development, tourism, small industries or horticulture.⁷¹

Although the indigenous peoples in the CHT region have a special legal framework for the protection of their land rights, culture, language and autonomy, which have been guaranteed through the Peace Accord and laws, there is no such accord or special laws on the protection of indigenous peoples living in the plain lands.

Many negotiated peace agreements expressly or implicitly address the issues of human rights in order to resolve ethnic conflicts. Generally, such agreements provide for three human rights aspects: first, some type of self-determination often

⁶⁹Human rights of Indigenous Peoples, Kapaeeng Foundation Report 2012, see www.kapaeeng.org/wp-content/uploads/2013/01/Kapaeeng-HR-Report-2012-e-version-02.pdf

⁷⁰Ibid.

⁷¹Hossain, 2009: 188.

falling short of secession or statehood, such as autonomy or power sharing; second, a collection of human rights institutions – bill of rights, constitutional courts, land commissions, new police and criminal justice structures, etc.; and third, mechanisms to deal with past human rights abuses, such as a truth commission or tribunals.⁷²

Although the CHT Accord does not expressly use the term ‘human rights,’ its many provisions have significant bearing on the enjoyment of human rights of indigenous peoples. In fact, the Peace Accord addresses issues of land rights, the internal autonomy of tribal peoples, the preservation of cultural heritage, and consultation with tribal peoples, all of which are generally related to civil, political, economic, social and cultural rights. It also contains a provision on the Land Dispute Settlement Commission to protect the land rights of the tribal peoples in the CHT.

Non-implementation of the Peace Accord is negatively affecting the enjoyment of human rights of the indigenous peoples in the CHT. Highly polarized and divisive politics of the country, a lack of strong political willingness and the heavy presence of military in the region are mainly responsible for non-implementation of the Peace Accord. The non-implementation of the Peace Accord is increasing the prospect of renewed political instability and ethnic conflict in the region. This is evident from violent clashes between the indigenous peoples and the Bengali settlers in the region in recent years. Increasing Islamization in the region is another source of concern for the tribal peoples.

⁷²Bell, 2000: 6.

Widespread incidents of kidnapping of members of rival groups, extrajudicial killings, arbitrary arrests, torture, and sexual harassment of indigenous women are also attributed to the non-implementation of the Peace Accord. The delayed implementation of the Peace Accord is also creating social instability in the region, as the PCJSS and the UPDF continue to fight among themselves to establish supremacy.⁷³ Internal conflicts within regional, indigenous political groups and between indigenous people and Bengali settlers have become a pretext for the continued military stronghold on the region and the delayed implementation of the Peace Accord. The continuing failure to adequately implement all the provisions of the CHT Peace Accord in a timely manner and to address developments led to further marginalization of the indigenous peoples. Thus, not implementing the Peace Accord leads to the denial of land rights and the rights to self-government, cultural identity and livelihoods of the indigenous peoples, and generates conflict and a widening discrimination based on ethnic divides. Recently, 22 Chak families have been forcefully evicted from their home and lands.

⁷³Ahmed and Masud, 2013.

In addition to the above, there are three major consequences of non-implementation of the Peace Accord on human rights in the CHT:

- The Regional Council and Hill District Councils are currently not able to ensure the basic needs of the tribal peoples because many subjects are yet to be transferred to these bodies as envisaged in the Peace Accord. Economic, social and cultural rights such as access to health services, employment and education for the tribal peoples are not properly ensured because these bodies are not fully mandated according to the Peace Accord. These institutions are to be self-governed and decentralized in delivery of basic services to the people in the region.
- Institutions such as the CHT Regional Council and the Hill District Council currently lack accountability because no elections have been held since the conclusion of the Peace Accord. These institutions are being weakened by the non-implementation of the devolution of powers to the CHT Regional Council and Hill District Council and thus their autonomy is being eroded.
- Non-implementation of the Peace Accord also perpetuates prevailing discrimination and injustice in the CHT, which leads to further marginalization of the indigenous peoples. The indigenous peoples are facing discrimination in the enjoyment of economic, social and cultural rights, such as access to employment, education and health services.

- Non-implementation of the Peace Accord also results in the denial of the right of indigenous peoples to be governed by elected representatives and the right to be consulted in decision-making process.

11. The Human Rights Situation of Indigenous Peoples in the Plain Lands

Bangladesh is home to as many as 45 distinct ethnic minority groups, which constitute two percent of the total population.⁷⁴ Although the expression 'indigenous peoples' is not officially used in Bangladesh, there are many justifications to identify these ethnic minority communities as indigenous peoples. Their largest concentration is in the CHT, where 13 different ethnic groups together constitute the vast majority of the population. The other ethnic minority groups live in the plain lands, and are dispersed in different districts of Bangladesh. The ethnic minority community in the plain lands is one of the most disadvantaged and vulnerable segments of the society in terms of almost all major development indicators, such as income, employment, poverty, health, education and access to justice. It cannot be denied that they face discrimination in access to education, employment, and the enjoyment of civil and political rights.

In the plain lands, indigenous peoples face persistent land and resource grabbing as well as threats to their livelihoods and culture.⁷⁵ As a result, the indigenous peoples of the plain lands are the poorest of the poor in Bangladesh. Local influential people grab land by producing fake documents. Ethnic minority communities living on the plains have continuously been thrown

⁷⁴Sen, Roy and Lamin: 2007:16

⁷⁵See generally, Rahman, 2006.

out of their ancestral lands, allegedly by government agencies, influential sectors and private organizations using different techniques, including forged documents and forcibly ousting them from their lands, while the Government expropriated their lands for various development projects.⁷⁶ Due to land acquisition by the Government for 'social afforestation', most ethnic families in the north-western areas have become landless. Lands used as common property, graveyards and shrines were also grabbed. The increasing landlessness of the indigenous community has a severe effect on the fulfillment of their basic needs. Most of the indigenous peoples' household income basically depends on agricultural work. But their food security and habitat are at stake as a result of land-grabbing and loss of their traditional livelihoods.⁷⁷

There are three kinds of ownerships recognized by the Constitution of Bangladesh – state ownership, co-operative ownership and private ownership. Collective ownership, which is prevalent among the ethnic minority groups, is not recognized in the Constitution. This ownership should be legally protected because it is very important to them in terms of enjoyment of rights to land and natural resources. Among the indigenous peoples, the poverty level is much higher than that in mainstream society: 60 per cent of indigenous peoples

⁷⁶Supra note 72.

⁷⁷The State of Land Rights of Indigenous Peoples, 2008. The survey of the north-western minority communities since January 2008 was conducted jointly by the Jatiya Adibashi Parishad, Incidin Bangladesh and Jahangirnagar University's Department of Anthropology.

live below the poverty line, compared to 40 per cent at the national level. Many indigenous peoples are deprived of basic health services and pure drinking water due to geographical constraints and lack of human resources and medical facilities.

Although there are many commonalities in terms of human rights violations of indigenous peoples in the plain lands and the CHT, those living in the former face a different set of challenges because of their heterogeneous existence in different parts of Bangladesh. Furthermore, unlike indigenous peoples in the CHT, their distinct culture and land rights are not legally protected. Their distinct culture and traditional livelihoods are endangered by the activities of mainstream society.

12. Rehabilitation of Bengali Settlers

The Peace Accord does not mention rehabilitation and re-settlement of Bengali settlers. It stipulates the preparation of a voter list comprising only the tribal peoples and permanent Bengali residents of the three hill districts, that is, individuals having a specific address and legally valid ownership of land in the region. However, re-settlement of settlers of CHT is a very complicated and controversial process. A broader consensus is needed involving all stakeholders in the Peace Accord for carrying out any program on the rehabilitation of Bengali settlers from the CHT.

13. Recommendations and Ways Forward

Implementation of the Peace Accord

- Strong political will is necessary for implementation of the Peace Accord.
- A broad-based political consensus among different stakeholders should be developed in favor of implementing the Peace Accord.
- All laws and regulations conflicting with the Peace Accord should be abolished or amended for its proper implementation. The CHT Regulation of 1990, which delegates many functions to the Deputy Commissioners, should be amended to be consistent with the Peace Accord. Some laws, such as Land Khatian (CHT) Ordinance, 1984, should be abolished because they provide for a cadastral survey of the land in the CHT, which is in conflict with the Peace Accord. On the other hand, other laws and regulations should be amended in compliance with the full implementation of the Peace Accord: the CHT Development Board Ordinance, 1976; Social Afforestation Rules, 2008; CHT Transit Rules, 1973; the CHT (Land Acquisition) Regulation, 1958; the Rules of the CHT Bazar Fund, 1937; and the Police Regulation of Bengal, 1943.
- Development plans for the CHT region should be undertaken in due consultation with the Hill District Council and Regional Council, as envisaged in the Peace Accord while keeping in special focus the different needs and issues of the CHT.⁷⁸

⁷⁸Chowdhury, 2002.

- The CHT Land Commission should be made effective by bringing necessary changes in the Land Dispute Settlement Commission Act in line with the Peace Accord.
- Ongoing conflict between different fractions of indigenous peoples should be resolved.
- Antagonistic propaganda and attitudes against the Peace Accord must be stopped.
- The 13-point proposal for the amendment of the Land Disputes Settlement Commission Act, 2001 should be fully implemented.
- A roadmap including a timeline for implementation of all provisions of the Peace Accord should be prepared.⁷⁹
- A phased withdrawal of temporary military camps should be implemented in the region in accordance with the Peace Accord in order to reduce the extent of undue military control and resultant tensions, and thereby restore normalcy in the region.
- The transfer of competences normally performed by civilian agencies but now undertaken by the military, such as development projects and any other activities not requiring specific military skills, to the civil administration and to institutions should be set up under the Peace Accord.
- In order to facilitate freedom of movement, unnecessary military check-posts and unreasonable restrictions on the activities of NGOs and foreigners should be removed.
- All the agreed subjects and functions, as specified in the Peace Accord should be transferred to the Hill District Councils, with immediate effect.

⁷⁹Interview with Ananda Bikas Chakma, Assistant Professor, Department of History, University of Chittagong, 13 July 2013.

- Rules of Business for the operation of Hill District Councils should be formulated for the CHTRC and the Hill District Council in order to ensure the full functioning of its role in coordination and supervision of the general administration and development of the region and in advising the Government on legislation.
- Rules for criteria by the Government should be formulated for creating the voter list and electing the three Hill District Councils.
- Local government institutions such as the *Union Parishad*, *Upzilla Parishad*, municipalities in the CHT should be placed under the jurisdiction of the CHT Affairs Ministry.⁸⁰
- Controversial operations such as ‘Operation Ottoron’ in the CHT should be withdrawn.
- Elections of the three Hill District Councils and the Regional Council should be held immediately.
- A separate fund for the Regional Council should be established for its financial autonomy.
- The current process of granting leases of the lands of the CHT to non-resident people should be stopped.
- The Peace Accord should be enshrined in the Constitution.
- An external third party should oversee the implementation with a clear timeline for the process.

⁸⁰Interview with advocate Protim Chakma Pampu, 12 July 2013.

Protection of Indigenous Peoples in the Plain Lands

- A separate Land Settlement Commission should be set up for the protection of land rights of indigenous community in the plain lands.
- The eco-park projects in different areas where ethnic minority community reside should be cancelled.
- Impunity for human rights violations must be stopped.
- A comprehensive law should be adopted to protect their land rights, cultural heritage and traditional livelihoods of indigenous peoples. This law should also set out the rights of the indigenous peoples of Bangladesh in line with international standards and norms.
- Bangladesh should endorse the United Nations Declaration on the Rights of Indigenous Peoples, ratify ILO Convention No. 169 of 1989 and the Optional Protocol to the International Covenant on Civil and Political Rights, and withdraw the reservations concerning certain provisions of the Convention on the Elimination of All Forms of Discrimination against Women.
- The NHRC of Bangladesh should investigate alleged violations of the rights of indigenous peoples and other residents of the CHT, and publish the findings of such enquiries, together with recommendations.
- Indigenous peoples must be consulted before undertaking any development project that concerns them.

14. Conclusions

It is widely believed that implementation of the Peace Accord will not only be helpful in ending the ongoing ethnic conflict, but will also lead to the better protection of human rights and fulfillment of the basic needs of the tribal peoples in the region. Thus, full and effective implementation of the Peace Accord is essential for protection of human rights of the tribal peoples in the CHT region. The State's failure to implement all the provisions of the Peace Accord in a timely manner is leading to increased frustration and disillusionment among the indigenous peoples, leading to demonstrations, political movements or struggles. The ideological conflict between indigenous organizations, distrust between Bengali settlers and indigenous peoples, and lack of confidence by indigenous groups further limit the implementation of the Peace Accord.⁸¹ The Peace Accord should be implemented in good faith by the Government, which will pave the way for peace, stability and the realization of human rights in the region.

Although indigenous peoples in the CHT region are legally protected by the Peace Accord and other laws and regulations, there is no comparable legal framework for the protection of indigenous peoples in the plain lands, which is needed.

⁸¹Chowdhury, 2008.

References

Adnan, Shapan. 2008, 'Migration, Land Alienation and Ethnic Conflict: Causes of Poverty in Chittagong Hill Tracts of Bangladesh', *Journal of Agrarian Change*, Vol. 8, Issue 1, pp. 165-190.

Ahmed, H.U. and Masud, Md. M.H. 2013. *The Chittagong Hill Tracts Peace Accord in Bangladesh: An Overview*, *Mediterranean Journal of Social Sciences*, Vol. 4 No 4.

Alam, M. Shah. 1998. *A Constitutional Review of the CHT Peace Accord (in Bangla)*, A paper presented in a seminar on 27 February 1998 in Chittagong.

Alam, M. Shah, 2010. *Revisiting CHT Peace Accord*, the *Daily Star*, 8 May 2010, p. 11.

Anaya, S.J. 1989. 'The Rights of Indigenous Peoples and International Law in Historical and Contemporary Perspective', *Harvard Indian Law Symposium*. pp. 191 - 219.

Anaya, S.J. 1996. *Indigenous Peoples in International Law*, Oxford University Press, New York. p. 130.

Anaya, S.J. 1994. 'The Native Hawaiian Peoples and International Human Rights Law: Toward A Remedy for Past and Continuing Wrongs', *28 Georgia Law Review*, pp. 309 - 342.

Baer, L.A. 2011. *Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997*, submitted by the Special Rapporteur, Permanent Forum on Indigenous Peoples, Tenth session, New York, 16-27 May 2011.

Barkat, A.B. 2009. Socio-Economic Baseline Survey of Chittagong Hill Tracts, UNDP, Dhaka.

Bell, C. 2000. Peace Agreements and Human Rights, Oxford University Press, New York. p. 6.

Chakma, M.K. 2013. 'Amendment of CHT Land Commission Act 2001 needed', 26 June 2013, "The Daily Star", p. 7.

Chowdhury, B.H. 2002. Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord, University of Illinois.

Chowdhury, N.J. 2008. The Chittagong Hill Tracts Accord Implementation in Bangladesh: Ideals and Realities, A paper presented in Conference on 'Challenges of Governance in South Asia' in Kathmandu, Nepal 15-16 December 2008.

Daes, E.I.A. 1999. Human Rights of Indigenous Peoples. Second progress report, prepared by E.I.A. Daes, Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Fifty-first session, Item 7 of the provisional agenda. pp. 11 - 21.

Dey, A.B. 2013. "Landless due to land grabbers", 19 June 2013, The Daily Star, p. 2.

Merritt, J. and Fenge, T. 1990. 'The Nunavut Land Claims Settlement: Emerging Issues in Law and Public Administration', 15 Queens Law Journal. p. 255.

Gain, Philip, "Life and Nature at Risk", in The Chittagong Hill Tracts: Life and Nature at Risk, Raja Devashish Roy, et al., eds.)i. Dhaka, Bangladesh, (2000), 17.

Ganz, B. 1996. 'Indigenous Peoples and Land Tenure: An Issue of Human Rights and Environmental Protection,' 9 Georgetown International Environmental Law Review. p. 173.

Hossain, S. 2008. Human Rights in Bangladesh, Ain o Salish Kendra (ASK), Dhaka, p. 188.

Kapaeing Foundation Bangladesh Report on Indigenous Peoples, 2011

Kastrup, J.P. 1997. 'The Internationalisation of Human Rights from the Environmental and Human Rights Perspective', 32 Texas International Law Journal. pp. 96-122.

Kawharu, I. H. ed. 1989. Waitangi: Maori and Pakeaha Perspective of the Treaty of Waitangi, Oxford University Press, Oxford.

Kingsbury, B. 2001. 'Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law'. In Alston, P. ed. Peoples' Rights, Oxford University Press, Oxford. pp. 71-72, 102.

Lawrey, A. 1990. 'Contemporary Efforts to Guarantee Indigenous Rights under International Law', 23 Vanderbilt Journal of Transnational Law. p. 703.

Mohsin, Amena, 1997. The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh, Dhaka, The University Press.

Naqvi, F.H. 1996. 'Peoples' Rights or Victim's Rights: Re-examining the Conceptualisation of Indigenous Rights in International Law', 71 Indiana Law Journal. p. 726.

Nettheim, G. 1988. 'Peoples' and 'Populations' – Indigenous Peoples and the Rights of Peoples. In Crawford, J. ed, *The Rights of Peoples*, Clarendon Press, Oxford. p. 116.

Plant, R. 1996. Addressing indigenous land rights and claims: the role of international technical assistance”, paper prepared for the Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims.

Quader, G.M. 2008. 'Indigenous Peoples of Bangladesh', *The Daily Star*, 17 July 2008.

Rahman, M., ed. 2006. *The Garos: Struggling to Survive in the Valley of Death*, ELCOP. Dhaka.

Roy, R.D. 2000. 'Implementation Status of the Chittagong Hill Tracts Accord of 1997' in *The Chittagong Hill Tracts: The Road to a Lasting Peace*, Victorial Tauli Corpuz et al., eds., Tebtebba Foundation, Philippines.

Roy, R.D. 2012. *Promoting Partnerships in Implementing Intra-State Autonomy Agreements: Lessons from the Chittagong Hill Tracts*, Bangladesh, Geneva.

Sen, Sukanto, Roy Avijit and Lamin, Silvanus, 2007. *Indigenous Peoples of Plain Lands*, BARSIK, Dhaka.

Shelly, Mizanur Rahman, ed., 1992. *The Chittagong Hill Tracts of Bangladesh: the Untold Story* Centre for Development Research, Dhaka, Bangladesh.

Torres, R. 1991. 'The Rights of Indigenous Populations: The Emerging International Norm', *16 Yale Journal of International Law*, 127, p. 162.

Triggs, G. 1993. 'Australia's Indigenous Peoples and International Law: Validity of the Native Title Amendment Act 1998', 23 Melbourne University Law Review, p. 394.

Triggs, G. 2002. 'The Rights of Indigenous Peoples to Participate in Resource Development: An International Legal Perspective'. In Zillman, D.N, A.R Lucas. and G. Pring, eds. Human Rights in Natural Resources Development: Public Participation in the Sustainable Development of Mining and Energy Resources, Oxford University Press, Oxford. pp. 123-154.

Williams, R.A. 1990. 'Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World', Duke Law Journal. p. 664.

**Annex:
Matrix on Major Provisions of the Chittagong Hill Tracts
Peace Accord, 1997**

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|----------------------|--|--|---|--|
| Part A, Article 1 | Both the sides have recognised the need for protecting the characteristics and attaining overall development of the region considering Chittagong Hill Tracts as a tribal inhabited region. | There have been only a few initiatives to uphold the special character of region and indigenous peoples. | The right to self-determination | More legal and administrative measures are needed in consultation with the indigenous peoples. |
| Part A, Article 2 | Both the parties decide to formulate, change, amend and incorporate concerned acts, rules and regulations as soon as possible according to the consensus and responsibility expressed in different sections of the agreement | Most of the relevant laws and regulations have been amended in line with the Peace Accord. However, some of the legal provisions are still inconsistent with the Peace Accord. | The right to self-determination | Necessary amendments should be made, and a rules of business should be adopted to make the Peace Accord fully operational. |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|-------------------------|---|--|--|---|
| Part A, Article 3 | An Implementation Committee shall be formed to monitor the implementation process of the Peace Agreement with the following members : a) A member to be nominated by the Prime Minister; b) Convenor; c) Chairperson of the Task Force formed under the purview of the agreement; Member; c) President of Parbatya Chhattagram Jana Sanghati Samiti; Member | This Committee was formed in 1998. | | The committee should be made effective. |
| Part B Art. 4(a) | There shall be 3 (three) seats for women in each of the Hill District Councils. One third (1/3) of these seats shall be for non-tribal. | It has been incorporated in the Hill District Council Acts and implemented | The right to participate in the decision-making process | Not fully achieved |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|------------------------------------|
| 14b | <p>A person shall, under the Law, be eligible to be enrolled in the electoral roll, if (1) He/she is a citizen of Bangladesh; (2) He/she is not less than 18 years of age; (3) He/she is not declared mentally unsound by any competent court; (4) He/she is a permanent resident of Hill District.</p> <p>The Council can, in accordance with regulations, appoint class three and class four employees, and can transfer, suspend, dismiss, remove or can impose any other punitive action on them. However, it was provided that the priority shall be given to the tribal inhabitants in case of such appointments.</p> | <p>No voter list for the Regional Council and the Hill District Councils has been created.</p> <p>This provision has been incorporated in the three Hill District Council Acts but has not been fully implemented</p> | <p>The right to vote is yet to be exercised due to lack of the voter list.</p> <p>The right to employment</p> | <p>Should be fully implemented</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|--|---|---|---|
| Art. 19 | <p>The Council shall be competent to prepare, undertake, and implement with the fund received from the government, development projects on any subjects placed under the council and all the development programmes initiated at the national level shall be implemented by the concerned ministry/department through the Council.</p> | <p>It has not been implemented fully in line with the Peace Accord.</p> | <p>The right to development</p> | <p>Should be fully implemented s e c u r e autonomy</p> |
| | <p>(4) All development programs undertaken by the government at national level on any subject placed under the Council shall be implemented by concerned ministries, departments or institutions through the Council.</p> | <p>The Law was not amended accordingly.</p> | <p>The right to development</p> | <p>Should be fully implemented</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|--|
| Art. 26 | <p>[...] no land, including those land suitable for giving settlement within the territorial boundaries of the Hill District shall be transferable by lease, settlement, purchase or sale without prior approval of the Council provided that this provision shall not be applicable in areas within the Reserved Forests, Kaptai Hydroelectric Project, Bethunia Earth Satellite Station, State-owned Industries and Factories and lands recorded in the name of government.</p> <p>b) Notwithstanding anything contained in any law for the time being in force, no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council.</p> | <p>Incorporated as it is in the Khagrachari and Bandarban Hill District Councils' Acts. But in the case of Rangamati Hill District Council, the words "focal authorities" have been inserted after the words "in the name of the government". But this provision is not fully implemented because the Government often transfers land through leases.</p> | <p>The right to Land</p> | <p>This provision is crucial and should be implemented</p> |
| | | <p>Although the provision has been included in the laws, the District Councils, are rarely consulted by the Government on land acquisition.</p> <p>Hill District Council Acts are increasingly involved in acquiring and transferring lands.</p> | <p>The right to Land</p> | <p>Should be fully implemented</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|------------------------------------|
| | <p>c) The council can supervise and control functions of Headman, Chainman, Amin, Surveyor, Kanungo and Assistant Commissioner (land).</p> | <p>This provision has been included in the Hill District Council Acts, but the Councils have not officially been invested with any such power.</p> | <p>The right to self-determination</p> | <p>Should be implemented fully</p> |
| | <p>d) Fringe land in Kaptai Lake shall be given in settlement on priority basis to original owners.</p> | <p>This provision has been included in the Hill District Council Acts but the authorities concerned have not been observing it.</p> | <p>The right to land</p> | <p>Should be implemented fully</p> |
| <p>Art. 27</p> | <p>"Notwithstanding anything contained in any other law for the time being in force, the responsibility of collecting the Land Development Tax of the district shall rest in the hands of the council and the collected tax of the district shall be deposited in the fund of the council."</p> | <p>Although the provision has been included in the Hill District Council Acts, this power is still exercised by the Deputy Commissioners of the three Hill Districts.</p> | <p>The right to economic self-determination</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|------------------------------------|
| Art. 32 | <p>"If, in the opinion of the council, any law made by the national parliament or any other authority as applicable to the hill district is one which creates hardship for the said district or is objectionable to the tribal, the council may, upon stating the cause of hardship or objection, apply to the government in writing for amending or relaxing the application of such law, and the government may take remedial measures in accordance with such applications."</p> | <p>Amended and included in the three Hill District Council Acts. However, this legislative privilege is yet to be tested.</p> | <p>The right to self-determination</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|-------------------------|---|---|--|------------------------------------|
| Art. 34 | <p>The following subjects shall be included in the functions and the responsibilities of the Hill District Council: a) Land and land management; b) Police (local); c) Tribal law and social justice; d) Youth welfare; e) Environmental protection and development; f) Local tourism; g) Improvement Trust and other local government institutions except Poursabha and Union Councils; h) Issuing licences for local commerce and industries; i) Proper utilization of rivers and streams, canals and beels (low-lying marshy tracts) and irrigation systems other than water resources of the Kaptai Lake; j) Maintaining the statistics of birth and deaths; k) Wholesale business; l) Jum cultivation.</p> | <p>Until now 12 subjects have been transferred to the Hill District Councils.</p> | <p>The right to self-governance</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|-------------------------|--|--|--|------------------------------------|
| | <p>2. The chairperson of this council whose status shall be equivalent to that of a state minister and who shall be a tribal shall be elected indirectly by the elected members of the Hill District Councils.</p> | <p>This provision has been included in the CHTRC Act. The chairperson is also from a tribal group and has been given the status of a state minister.</p> | <p>Right to self-governance</p> | <p>Should be implemented fully</p> |
| <p>Art. 9</p> | <p>The Council shall supervise and coordinate all the subjects vested in the Hill District Councils in addition to coordinating all the development activities carried out by the three Hill District Councils..</p> | <p>It is not implemented since the relevant laws have not been changed to accommodate this provision.</p> | <p>Right to self-governance</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|------------------------------------|
| | <p>10. The Chittagong Hill Tracts Development Board shall discharge duties assigned to it under the general and overall supervision of the Council. The government, in appointing the chairperson of the Development Board, shall give preference to the competent tribal candidates.</p> | <p>The Development Board (CHTDB) continues to disregard the authority of the CHTRC while discharging its functions.</p> | <p>Right to self-governance</p> | <p>Should be implemented fully</p> |
| <p>Art. 11</p> | <p>The Chittagong Hill Tracts Regulation of 1900 and other related acts, rules, and ordinances, if found inconsistent with the Hill District Council Acts of 1989, shall be removed by law as per the recommendations of and in consultation with the Regional Council.</p> | <p>This is included accordingly in the CHTRC Act. However, the Government has not taken any steps to date to eliminate the inconsistencies in the above-mentioned Acts and Regulations.</p> | <p>Right to self-governance</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|--|---|---|------------------------------------|
| Art. 13 | <p>In making any law in connection with the Chittagong Hill Tracts, the government shall enact such law in consultation with and as per the advice of the Regional Council. If it becomes necessary to amend any such law or to make any new law that bears an adverse effect on the development of the three Hill Districts and the welfare of the tribal peoples, the council shall be competent to file a petition or submit recommendations to the government.</p> | <p>The CHT Development Board (CHTDB) continues to disregard the authority of the CHTRC while discharging its functions.</p> | <p>Right to self-governance</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|--|---|---|------------------------------------|
| Art. D | <p>2. After the agreement signed between the government and the Jana Samhati Samity, and implemented, and the tribal refugees and the internally displaced tribal rehabilitated, the government, in consultation with the Regional Council to be constituted under this agreement, shall commence in the CHT the land survey as soon as possible and shall finally determine the land ownership of the tribal peoples through settling the land disputes following proper verification, and record their land and ensure their rights thereto.</p> | <p>This is a crucial programme that has not yet been implemented.</p> | <p>Right to Land</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|--|---|---|------------------------------------|
| | <p>3. In order to ensure the land ownership of tribal families having no land or lands below two acres, the government shall, subject to availability of land in the locality, ensure settling two acres of land per family. In the event of non-availability of required land, grove-lands shall be arranged.</p> | <p>This programme has not yet been implemented.</p> | <p>Right to Land</p> | <p>Should be implemented fully</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|--|--|---|---------------------------------|
| Art. 4 | <p>A Land Commission headed by retired justice shall be constituted for settlement of disputes regarding lands and premises. This commission shall, in addition to early disposal of land disputes of the rehabilitated refugees, have full authority to annul the rights of ownership of those hills and lands which have been illegally settled and in respect of which illegal dispossession has taken place. No appeal shall be maintainable against the judgment of this commission and the decision of this commission shall be deemed to be final. This provision shall also be applicable in the case of fringe-lands.</p> | <p>This has been established but is not effective.</p> | <p>Right to land</p> | <p>Should be made effective</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|---|---|---|
| Art. 4 | <p>8. Allotment of land for rubber and other purposes: Settlement of lands of those non-tribal and non-locals who were allotted with lands for rubber and other purposes but did not undertake any project during the last ten years or failed to utilize the land properly shall be cancelled.</p> | <p>The Deputy Commissioners of three Hill Districts, in violation of the provision, allocated more lands to non-tribal and non-local persons during the years following the Peace Accord.</p> | <p>Right to land and cultural integrity</p> | <p>Should be implemented fully</p> |
| Art. 10 | <p>Quota reservation and stipend grants: The Government shall maintain the quota system for the tribal with respect to government service and in institutions for higher studies until their attainment of parity with other regions of the country.</p> | <p>The provision on quota reservation and stipend grants is not being implemented properly. With regard to the admission quota for indigenous students, there is no coherent policy and practice.</p> | <p>Right to education, employment</p> | <p>Should be properly and fully implemented</p> |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|--|---|-----------------------------|
| Art. 11 | The government and the elected representatives shall strive to uphold the characteristics of tribal creed and culture. The government shall patronize and help the cultural activities of the tribes towards their development. | Only a few measures have been taken to implement this provision. There are three Small Ethnic Groups Cultural Institutes established by the Government in the three hill districts. | Right to cultural identity | Should be implemented fully |
| Art. 18 | Permanent residents of the CHT, subject to priority being given to tribal, shall be appointed to all posts of officers and employees at all levels of government, semi-government, council offices, and autonomous bodies in the CHT. In case qualified candidates among the permanent residents of CHT are not available for a particular post, appointment in that post may be made on deputation from the government for a term of a certain period. | No steps have been taken to date by the Government for inclusion of the said provision in the c o n c e r n e d appointment or service rules and regulations of the ministries to be put into practice in the CHT region. | Right to work | Should be implemented fully |

| CHT Peace Accord | Basic Features of the Peace Accord | Implementation Status | Impact – economic, social and cultural rights and civil and political rights/human rights | Recommendations |
|------------------|---|--|---|-----------------------------|
| Art. 19 | A Ministry of the Chittagong Hill Tracts Affairs shall be established by appointing a minister from among the tribal groups. An Advisory Council shall be formed to assist this ministry. | The CHT Affairs Ministry was established by appointing with a minister from among the tribal groups. The ministry is unable to share powers and carry out its responsibilities as per the rules of business for CHT. | Right to self-governance | Should be implemented fully |



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