



**Institutional Responsiveness to Indigenous Rights:
The Case of Chittagong Hill Tracts Land Dispute Resolution Commission**

By

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Abstract

The Chittagong Hill Tracts Peace Accord 1997 signed between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti (PCJSS), recognises the reestablishment of the rights of the indigenous people with the formation of locals & regional councils as controlling and supervisory bodies over land & land management, law & order, civil administration, police (local), development, primary & secondary education, forest & environment, and many more. After more than a decade of signing, the Accord has not been implemented fully and the violations of human rights continue.

This study examines the challenges which Bangladesh as a post-war state face, in establishing democratic institutions and particularly indigenous institutions in order to bring justice and peace in the disputed CHT region. This study describes how the Land Dispute Resolution Commission which has been formed in 1999 to settle the land disputes between the indigenous people and Bengali settlers, can make its activities responsive to both a diverse constituency of indigenous people without ignoring the Bengali migrants and all the same gains trust and ownership among the Hillpeople.

The study describes ‘the state of nature and politics’, ‘civil military relations’, ‘nation and identity building’ and ‘the geopolitical’ issues and how these issues played a key role in the policy formation process for CHT. In other words, I am keen to examine whether or not these issues influenced and made an impact on trust and ownership gaining process.

Keywords: CHT Land Conflict, Land Dispute Resolution Commission, Indigenous Rights, Bengali Settlers, Peace Accord, Democracy, Nation and Identity Building, Civil-Military Relations, Post-War Institution Building, Trust and Ownership.



Picture: View of Chittagong Hill Tracts Bangladesh

List of Abbreviations

ACC = Anti Corruption Commission
AITPS = Asian Indigenous and Tribal Peoples Network
AL = Awami League
BEC = Bangladesh Election Commission
BNP = Bangladesh Nationalist Party (Bangladesh Jatiyatabadi Dal)
CHT = Chittagong Hill Tracts
CHTDB = Chittagong Hill Tracts Development Board
DC = Deputy Commissioner
GOB = Government of Bangladesh
HDC = Hill District Council
HWF = Hill Women's Federation
ICCPR = International Covenant on Civil and Political Rights
ICERD = International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR = International Covenant on Economic, Social and Cultural Rights
IDP = Internally Displaced Persons
IWGIA = International Working Groups on Indigenous Affairs
ILO = International Labour Organization
JIB = Jamaat-e-Islami Bangladesh
MoCHAT = Ministry of Chittagong Hill Tracts Affairs
NHRC = National Human Rights Commission
PCJSS = Parbatya Chattagram Jana Samhati Samiti
PCP = Pahari Chatra Parishad (Hill Student's Forum)
PGP = Pahari Gono Parishad (Hillpeople's Council)
RC = Regional Council
RF = Reserved Forest
UCF = Unclassified State Forest
UN = United Nations
UNDP = United Nations Development Program
UNESCO = United Nations Economic, Social and Cultural Organization
UNPFII = United Nations Permanent Forum on Indigenous Issues
UPDF = United People's Democratic Front
USAID = United States Agency for International Development

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Chapter One: Introduction

Violent conflict is frequently accompanied by a change in land distribution and property rights. With the end of an armed conflict, especially a prolonged one involving significant displacement creates a situation whereby a significant proportion of the affected population will begin to seek access or reaccess to lands and land resources.¹ Given the size of the rural population pursuing this endeavour in many post conflict scenarios, this can be one of the primary features of a post-war phase.² People with insecure tenure rights are often indiscriminately or forcibly removed from their land often without fair compensation or due to process.³ Competing land claims usually resulted from distinct historical periods such as colonial era titles and titles issued during illegal occupations, as well as claims based on informal customary land use. Tenure insecurity also arises in post-war situations where people have been competing with claims to the same piece of land.⁴ Government sponsored resettlement schemes can also displace people from the homes and lands and this displacement can be intentional, which we can find in the case of Tanzania, Nigeria, Mozambique, Indonesia, Kosovo, Angola and Bangladesh. In Mozambique and Angola forced settlement schemes led to both the wars for independence and also contributed to the civil wars following independence. Indonesian government policy of Javanese population resettlement from the main crowded island to other parts of the archipelago, and land seizures for the benefit of the settlers, resulted violence between indigenous groups and settlers that have driven several states.⁵ In the Chittagong Hill Tracts of Bangladesh more than 100,000 indigenous people were being relocated without fair compensation in the 1960s, when a reservoir was created for hydroelectricity and a paper mill for development of the area.⁶ Under the Bangladesh government resettlement schemes in the year 1979 and the early 80s, around 200,000 to 400,000 landless Bangali farmers from several Districts settled in the CHT areas,⁷ to shift the demographic pattern and balance of power and to weaken the supremacy of the Hillpeople in CHT.⁸ Government involvement that supports (or is perceived to support) one side over another can significantly increase tensions, which pictures in the Rwanda, Bangladesh and Burundi cases. The Bangladesh Army has been regularly accused of siding

¹ Pantuliano, Sara 2009: 193

² Unruh, Jon D. 2003: 354

³ USAID 2005: 3

⁴ Ibid

⁵ Ibid

⁶ Shelley, Mizanur Rahman 1992: 31

⁷ Roy, Raja Devasish 2002: 5

⁸ Jamil & Panday 2008: 468

with the Bengali settlers. In a recent clash in the Sajek Union under Rangamati District on 19-20 February 2010, 4-8 people were killed and dozens of houses were set on fire at Mahajanpara and Milanpur villages.⁹ Bor Chakma, a resident of Kajachhara claimed, “if the army did not cooperate with the settlers, this level of destruction could never be taken place”.¹⁰ Jon D. Unruh mentions that even conflict which had no land component initially can lead to tenure problems in the peace process, due to the spatial nature of both land tenure and armed combat.¹¹ In Bangladesh, although CHT leadership demanded autonomous rule of CHT for more than half a century, the issue of land as a separate issue, or as a key issue is not even noticeable up to the 1980s. It became however noticeable when JSS submitted five-points demand to the Bangladesh government, included a demand for the removal of all Bangali settlers who had been settled in the region since 1947.¹² Peace Accord or Treaty also attempts to reconstitute institutions or building new institutions at various levels to implement the accord. But when it comes to the land issue, “the difficulty stems more from issue of legitimacy (historical occupation and supported by oral histories) and from the institutional inability to effectively recognize and resolve important tenure issues”.¹³ ‘Trust and ownership building’, ‘use and access rights’ are often complicated and problematic in a post-war re-establishment. Not only do new laws need to address, but new laws must embrace what people are already doing ‘on the ground’. In a case from India, local level state officials are given the discretion to operate at the interface between formal and informal legal systems and pursue opportunities for adjustments between systems. Without seeking to impose state law, officials attempt to convince, co-opt, or realistically use any legal system, custom, norm or combination thereof to attain the state’s objectives.¹⁴ The objective of forming the CHT Land Dispute Resolution Commission is to settle the land disputes among the Indigenous people and Bengali settlers and bring peace and harmony in the Hill. It is also stated that the Commission shall settle disputes according to the existing rules, customs and practices of the Chittagong Hill Tracts.

Problem Statement

The CHT Land Dispute Resolution Commission was formed in 1999, under the provisions of the Chittagong Hill Tracts Peace Accord (CHT Peace Accord 1997), to settle down the land

⁹ ACHR, 23 February 2010

¹⁰ NEWAGE Xtra, March 5-11, 2010

¹¹ Unruh, Jon D. 2002: 338

¹² Roy, Raja Devasish 2000: 3

¹³ Unruh, Jon D. 2002: 337

¹⁴ Unruh, Jon D. 2004: http://www.beyondintractability.org/essay/land_tenure/

disputes among the indigenous people and the Bangali settlers, who are claiming ownership for the same piece of land. In addition to settling disputes of lands of the rehabilitated tribal refugees, shall have full power for cancellation of ownership of those lands and Hills, which have been so far illegally settled and occupied. It provides further that the decisions of the commission will be final and that no appeals will lie against its decision (Clause 4, Part D of the 1997 Accord). Though the government has officially declared the constitution of the Commission through a formal notification, its exact terms of reference and the detailed nature of its functions are not yet known.¹⁵ Two Commission Chairman served, since the formation of the Land Dispute Resolution Commission in June 3, 1999, without any progress to settle the land disputes. The current Commission Chairman, who took over the office in July 19, 2009, started his work to solve the land disputes within the given three years period of time, and assured that land held under customary law, will be considered when determining land disputes. The Parbatya Chattagram Jana Samhati Samiti (PCJSS), signing party of the Accord, has demanded to amend 21 provisions of the CHT Land Dispute Settlement Commission Act 2001, which are contradictory with the CHT Accord.¹⁶ The Chairman's decisions for conducting a cadastral survey of CHT lands, and issuing a public notice on March 17, 2010 inviting applications to settle land disputes without consultation and informing the Commission Members, again make the Commission dysfunctional. The Commission Members have censured for this unilateral decision of the Commission Chairman and started boycotting the Commission meetings, arguing for the amendment of the contradictory provisions of the 2001 Act first. Gautam Dewan, a prominent politician of CHT had summed up the CHT problem as "Land is the crux of the problem in CHT. Unless the Hillpeople get back their land rights, there cannot be a successful resolution to the problem."¹⁷ A writer on CHT issue concluded that "to any observer of the CHT, it is crystal clear that peace in the CHT is largely dependent upon the resolution of the land issue".¹⁸

Aim(s) and Research Questions

The main aim of this study is to analyze the role of institutions in a post-war situation, and how these institutions can play an important role to implement the peace process and maintain long term stable peace through establishing and recognizing indigenous rights particularly indigenous land rights. To do this I will focus on the Chittagong Hill Tracts

¹⁵ Ministry of Land, Circulation 3 June 1999

¹⁶ PCJSS

¹⁷ Mohsin, Amena 1997:111

¹⁸ Ibid 1998: 114

Land Dispute Resolution Commission and how this institution can contribute to the long-term stable peace by building up ‘trust and ownership’ along with the indigenous and Bengali settlers in CHT areas and with other stakeholders. To unfold this objective, the following research questions will be formulated;

- How far has the Commission succeeded in building trust and ownership along the Indigenous people and the Bengali settlers in the Hill Districts?
- Whether the national politics and policy-making process have influenced trust and ownership building process?

Significance of the Study

Reforming land tenure is an integral part of most post-conflict development, CHT Bangladesh is not exceptional. It is fair to say that land policy as an element of peace-building missions tend to be under-rated and has received little attention in the academic literature. Experiences from developing countries have shown that there is no magic wand solution to intractable land conflict. Certainty of titles can not be restored simply through state fiat. Community acceptance and political support are essential components for establishing a viable system of land administration. Most recent history witnessed a gradual recognition of customary land tenure including Malawi, Zimbabwe, South Africa, Venezuela, Bolivia and parts of the Philippines.¹⁹ Land and attachment of land play a fundamental role in the identity formation of groups and individuals. The peace process must recognize the impact of local land tenure issues and examine local and not merely national needs. Land policy must work to create institutions and laws to meet claims for property restitution. Considering the reviewed literature as well as the scope of this research, this study attempts to contribute to the existing empirical knowledge about ethnic land conflict. The study will therefore focus on how identity formation, political system and absence of democratic values contribute towards the recognition and establishment of the indigenous rights. Moreover, it will make a significant contribution to the field of indigenous academic and policy discourses; particularly on how the understanding changes and the relations of continuity between the state and indigenous people.

¹⁹ Adam, Jeroen 2010: 401

Definition of the Concepts

Trust

Though the scholar used the term ‘‘trust’ in the post-war reconstruction and governance literature, it has no clear or common definition. Trust has a direct relation with ‘logical act’ but is not synonymous with ‘confidence’ and ‘satisfaction’ and based on the outcomes of the service and the way it is delivered.²⁰ Negatively it is associated with the absence of threats of renewed violence and human rights violations and positively with confidence in post-war order. On micro level trust is used mostly in connection with community relations, particularly efforts to restore or establish positive communication among communities or individuals that were previously divided by violence.²¹ It can also be about wider considerations around service delivery in public service sectors. Trust building is the major challenge in any post-war situation. And ‘‘minorities may have little trust in constitution and so, even when convinced the ethnic majority may lack the power to commit itself in a credible manner’’.²² By employing the term ‘trust’ and its opposite distrust, I want to explore if and how the different peoples of CHT region are using their own distinct morally infused notions of trust and distrust in evaluating the benevolence of the Land Dispute Resolution Commission’s activities.

Ownership

The buzzword, ‘ownership’ is commonly used term in the development sector, especially in the statebuilding operations. However, the term ‘ownership’ begs the question of what? and by whom. IMF Working Papers, WP/02/72 (2002) claims that the concept is ambiguous and vague because it can not be observed; evidence for its existence is indirect and incomplete at best; the concept is dynamic and hence a continuously changing target; for any one policy there are dozens of disparate potential owners, not all of whom can or will agree to any single outcome; and governments are rife with heterogeneity even given the assumption that there is only a single level of government that is relevant.²³ The meaning also range from a sense of attachment to a programme or operation, to actual controlling authority. In a post-war situation, with its most positive sense, it reflects a desire on the part of external actors to avoid undermining pre-existing local process that may be the most effective response to local

²⁰ Protais, Musoni 2007:2

²¹ Sorbo, Gunnar M. 2004: 18

²² Bigombe, Betty, Collier, Paul & Sambanis, Nicholas 2000:332

²³ Scheye, Eric & Peake, Gordon 2005: 236

political questions. Ownership may refer to how a population comes to regard certain policies 'as their own'. Their involvement may be either passive (policies are designed to be responsive to local circumstances, culture, etc) or active (policies are designed through consultation with local actors). Ownership may also refer to decision making structures.²⁴ Here, the term 'ownership' is employed in order to investigate if and how the Land Dispute Resolution Commission is responsive, consultative and accountable to the CHT-people, and whether the local peoples (both Indigenous and Bengalis) have any control in the decision making process & through their participation as well as consent. If they have a degree of influence and ability to make the Commission accountable, are there any difference between the Indigenous people and the resident Bengali settlers?

Disposition

The study is organized in seven chapters. In this chapter I introduce a brief introduction about the relationship of land and conflict and how indigenous land rights issues have been addressed in the post-agreement situation. I also provide the problem, aim(s) and research questions, the definition of the concepts which being used in the study in this chapter. The following chapter is designed to shed light on methodological consideration, concerning the data collection and trust gaining in the research area. The third chapter deals with the theoretical consideration-focusing on indigenous land rights issues. The fourth chapter highlights the historical and political context which being used to suppress indigenous people movement and abolish their traditional land rights. Nation and identity building crisis, militarization, causes of land conflict in CHT and the development and signing of the 1997 Peace Accord also discussed in this chapter. Chapter five is designed to analysis the points which the study focused, including the theoretical and practical challenges for post-war indigenous institution building and trust and ownership building challenges in the community. Chapter six will analyse the nature of state, military influence in politics and administration, the role of political parties to establish a democratic society and how these points influence in the policy making issues to establish indigenous traditional rights. The final chapter will draw a conclusion about the points which are crucial in establishing indigenous rights and make a recommendation for securing indigenous land rights and to overcome the present crisis.

²⁴ Chesterman, Simon 2007: 10

Chapter Two: Methodology

Data have been regarded as the main asset of economic and social research. And data collection method depends on choice of methodology. Silverman and Punch point out that ‘the choice of method should not be pre-determined; rather researcher should choose a method that is appropriate to what the researcher is trying to find out.’²⁵ Choice of methodology should be driven to address the research questions. And if the topic is ‘sensitive’ then the researcher should take extra care about choosing methodology. My research topic is very sensitive, as land has become the major source of fighting between the Bengali settlers and indigenous people of CHT.²⁶ And fighting for supremacy between the Parbatya Chattagram Jana Samhati Samiti (PCJSS), signing party of the Accord and the United People’s Democratic Front (UPDF), the opposing party of the Accord has increased.²⁷ And indigenous peoples traditionally consider land with a spirituality and sacredness not generally comprehensible to others. For indigenous peoples, land is not merely a productive resource, a habitat of political boundary. As Victoria Tauli-Corpuz states, ‘*For Indigenous Peoples keeping our territorial or ancestral lands is the most important thing. This is what determines our identity. This is where our ancestors walked and where they learned everything they left us. Our land is where we forge our relations with Mother Earth and create social bonds with each other*’.²⁸ This chapter will focus on the methodological instruments and strategies used to search for the answer to the research questions: how far has the Commission succeeded in building trust and ownership along the indigenous people and the Bengali settlers in the Hill Districts? And whether the national politics and policy-making process have influenced trust and ownership building process?

Selection of Research Area

The situation of the Chittagong Hill Tracts (CHT) area claims to be similar as other post-war communities, which suffered from historical and state repression through various state

²⁵ Silverman, David cited from Punch 1998: 244-245.

²⁶ The Daily Star Tuesday, January 25, 2011: At least 300 people were killed and around 900 others injured related with land violence since the signing of the Accord in 1997.

²⁷ Since December 1998 more than 500 member of Parbatya Chattogram Jana Samhati Samity (PCJSS) and the United People's Democratic Front (UPDF) killed and about 1000 injured. Jamil, Ishtiaq and Panday, Pranab Kumar 2009: 1066. From 2010 the internal gunfight has significantly increased between the PCJSS and UPDF resulting in more than 30 indigenous leader and activists killed. And abduction becomes a regular phenomenon in CHT. Sources: Daily Newspapers of Bangladesh.

²⁸ Carino, Jill K. 2006: 2

mechanisms. CHT comprises the south-eastern region of Bangladesh with a total surface area of 13,189 sq. km., one tenth of the total land of Bangladesh and divided into three

Map: Location of Chittagong Hill Tracts in Bangladesh



Source: Ministry of Chittagong Hill Tracts Affairs, Government of Bangladesh

administrative Hill Districts of Rangamati, Khagrachari and Bandarban and shares international boundaries with India and Burma.²⁹ The original inhabitants of CHT belong to 12 ethnic groups, with their own individual culture, customs and language.³⁰ The economy of the indigenous people is land-based, and engaged in subsistence swidden cultivation, also known as 'jum' also referred to as 'slash and burn' or 'shifting cultivation'.³¹ In early June, 2010, I visited many villages in Khagrachari and Rangamati Districts and selected the Dighinala, Panchhari and Khagrachari Sadar Upazilla of Khagrachari District and Kawkhali, Langadu and Rangamati Sadar Upazilla of Rangamati District for field data collection. In these areas³², a large number of Bengali settlers are living and often engage in violence with the indigenous people. Besides, numbers of returnee refugees and IDPs are also living. A large portion of land also acquired by the state agencies for establishing security camps and training centres and other development purposes.

Selection of Respondents

Sampling of respondents plays an important role to collect valuable primary data. Selection of the sample should not be pre-set, and could be driven by the theoretical framework.³³ The researcher can choose 'probability sampling' (such as random sampling), 'convenience sampling' or 'purposeful sampling'. Purposeful selection or criterion-based selection³⁴ follows neither probability nor convenience way, but this strategy is used when it is difficult to get information through other sampling choices. In my research I use purposeful selection

²⁹ CHT District Statistics 1983, Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning, Government of the People's Republic of Bangladesh.

³⁰ More details at *The Chittagong Hill Tracts; Life and Nature at Risk*, published by Society for Environment and Human Development (SEHD) in 2000.

³¹ Roy, Rajkumari Chandra. 2000: 24

³² In Dighinala, 10,073 indigenous families and 3,858 Bengali settler families, in Panchhari: 8,096 indigenous people and 5,438 Bengali settler families, in Khagrachari Sadar 8,826 indigenous families and 2,653 Bengali settler families live. Most of the Bengali families live in the cluster village with food supplies from the Bangladesh Government (Source: Khagrachari DC Office, 2009). There is strong accusation against the Bangladesh Army for backing Bengali settlers to forcibly evict indigenous Jumma peoples to grab land and to destroy the Tila Buddhist temple in Dighinala Upazilla in August 2007. In Panchhari (1 May 1986) hundreds of Jummas (actual number not known) were killed and injured by the Bangladesh Army. 80,000 Jummas fled across the border to India. Even in the present situation often violence occurred for land grabbing issues by the Bengali settlers, indigenous women were raped and people have been killed. Security forces also grabbed land for building construction and security camps and in most cases indigenous people did not get accurate compensation. In Khagrachari Sadar Upazilla indigenous people's land has also been grabbed by Government itself for constructing offices and other development purposes. Indigenous people of both Kawkhali and Langadu Upazilla have suffered the same land grabbing problems by the Bengali settlers. In 4 May 1989 - the Bangladeshi settlers murdered 40 Jummas and the dead bodies were never recovered in Langadu. Now days Langadu Upazilla has become a fighting ground between UPDF and PCJSS. Both indigenous and Bengali people who lost their land in the Kaptai Dam area living in the Asam Basti and Omadamia Tila of the Sadar Rangamati Upazilla, as their lands have been grabbed by somebody or waiting for compensation from government.

³³ Silverman, David 2005: 23

³⁴ Light et al., 1990: 53

criteria. I have collected data in the month July and August of 2010 in Khagrachari and Rangamati District of CHT and the Capital City, Dhaka. I interviewed thirty five people both from indigenous and Bengali community, who claim the disputed land ownership. In Khagrachari, I selected my indigenous respondents, who have conflict over land but do not file cases. And Bengali respondents, who filed cases in the Land Dispute Resolution Commission.³⁵ In Rangamati, I selected only those who filed cases in the Land Dispute Resolution Commission both from Bengali and indigenous community.³⁶ Besides I interviewed ten civil society members from Rangamati, Khagrachari and Dhaka;³⁷ two members of PCJSS, one Members and Chairman of the Commission to get the insights of the conflict and the overall situation of present crisis.

Table 01: Number of Respondents by Ethnicity and District

Name of District	Indigenous		Bengali	Gender	
	Case Filed	Not Filed	Case Filed	Male	Female
Khagrachari	1	13	8	20	2
Rangamati	6	0	7	11	2
TOTAL	20		15	31	4

Trust Gaining in the Field

Trust is a crucial element in gaining access to potential research respondents in conflict zones and can vary between cultures, disciplines and individuals.³⁸ Access does not always ensure trust from the community and for gaining trust needs to work on day to day. Because people are often suspicious or fearful of a researcher's motives and may initially be wary of engaging in interactions, especially in post-war societies,³⁹ where laws and rules have been violated or abused; people living under state oppression; communal violence is present in various degrees, and there are large flows of refugees and internally displaced persons. Trusting relationship with gatekeepers can makes it easier to build trust with the people in the

³⁵ I collect the list from Land Dispute Resolution Commission Office.

³⁶ In Khagrachari, I found a very few number of indigenous people filed case in the Land Dispute Resolution Commission but in Rangamati, the number was higher.

³⁷ 3 Non indigenous civil society members from Dhaka and 1 from Rangamati.

³⁸ Norman, M. Julie 2009: 71. Got Trust? The Challenges of Gaining Access in Conflict Zones.

³⁹ Hammersley, M., & Atkinson, P. 2007. *Ethnography: Principles in practice* (3rd ed.). NewYork: Taylor & Francis.

field. Because *‘whether or not people have knowledge of social research, they are often more concerned with what kind of person the researcher is than with the research itself. They will try to gauge how far he or she can be trusted, what he or she might be able to offer as an acquaintance or a friend, and perhaps also how easily he or she could be manipulated or exploited.’*⁴⁰ I have been fortunate as I found a Bangladeshi student from an indigenous community in my university, who has completed his research on indigenous land rights issues and currently working as a development activist. I discussed my topic with him along with the possible research questions and he helped me to identify the research area. He introduced some people to me over the phone, and I easily entered into the indigenous community and got a warm welcome as like many other previous colonial societies, where someone’s word is more important than papers or signatures.⁴¹ During my fieldwork period, I also discussed my research topic with three respected retired teachers from the indigenous community to know the situation and history. They were however not my respondents. I openly share my personal background and the research objectives with simple and easy way as people are usually more willing to speak if they know something about your background, your interests, the topic of the research,⁴² without getting into details about the hypothesis or main questions, as they may confuse them-especially when dealing with people, less familiar with the academic work. Bengali respondents easily accepted and trusted me as a member of the majority Bengali community.

Semi-Structured Interviews

I used face-to-face interview for collecting my data. I avoided ‘participant observation’ because it is time consuming; and ‘focus group’ because participants may not be comfortable to discuss openly in the presence of the others, even in front of their own community participants.⁴³ The researcher can choose between structured, semi-structured, non-directive, focused and informal interviews on the basis of the objectives of the research. I used semi-structured interview with open ended questions because open-ended or uncoded questions do not constrain the respondent’s beliefs or opinions to predetermined categories.⁴⁴ Furthermore, semi-structured interviewing technique is quite helpful to enrich data and to prevent potential

⁴⁰ Silverman, David 2005: 255. Sited from Hammersley & Atkinson 1983. *Thnography: Principles in Practice*, London: Tavistock.

⁴¹ Norman, M. Julie 2009: 73

⁴² Rubin and Rubin 2005: 89

⁴³ There are two groups of indigenous people. One support peace accord and other don’t. Beside security intelligence also use indigenous people to collect information.

⁴⁴ Wilson, Michael 1996:101. *Asking Questions in Sapsford, Roger & Jupp, Victor edition Data Collection and Analysis*

constrains during the interview. In this regard, I benefited from semi-structured technique as I had the chance to add follow-up questions when something was not clear either for me or for the respondents.

Interview place is very important for a stress-free interview and for ensuring the security of participants as well as the researcher. Usually in post-war communities it is very difficult to maintain trust. Even a respondent can be perceived as a spy, if the topic addresses some of the society's most pressing social issues and policy questions.⁴⁵ Researcher's presence in a community can create security problems for the respondents as well as the researcher.⁴⁶ Jo Boyden stated that 'area affected by conflicts is generally subject to complex governance arrangements in which military and security concerns are predominant.'⁴⁷ Indigenous people of CHT face severe delays, harassment, extortion and violence at various army checkpoints. For the security of the respondents as well as myself and to avoid unnecessary hassle both for me and respondents, I requested my respondents to travel to Khagrachari District town. I used a meeting room, owned by the indigenous community for interviewing indigenous respondents. For Bengali respondents, I use a hotel meeting room, where I had been staying during my field work. Likewise in Rangamati District, I used a meeting room of indigenous NGOs for interviewing indigenous respondents and for Bengali respondents; I used the hotel meeting room.

Documentary Resources

I assembled secondary data both in English and Bengali from different sources that included published books, journal articles, research reports, government gazettes and laws, reports from UN and other international organizations, human rights groups, online correspondence, relevant newspaper articles and news published in the national dailies in Bangladesh from 1997 to date.

Ethical Considerations

Before conducting the field work, I prepared an *informed consent form* including a brief explanation of the nature of the research, as well as providing an assurance of confidentiality and anonymity of the respondents. However none of the respondents demanded anonymity or confidentiality. Maintaining confidentiality is related with trust. Lincoln and Guba state that

⁴⁵ Ger, Güliz and Sandikci, Özlem 2006: 511.

⁴⁶ Norman M. Julie 2009: 77 coded from Jacobsen and Landau. The Dual Imperative of Refugee Research

⁴⁷ Boyden, Jo. Anthropology Under Fire Ethics, Researchers and Children in War

“trust is not established once and for all; it is fragile, and even trust that has been a long time building can be destroyed overnight in the face of an ill-advised action”.⁴⁸ During the interview period, both with the Bengali and indigenous respondents, I clearly mentioned that I am interviewing both the community, but never disclose their opinions in fronts of other respondents. Within the whole data collection process and writing period, I was very much aware of my dominant identity and tried to avoid all sorts of biasness.

Delimitations

Recently, growing literatures find out the relationship between the natural resource and violent conflict and some studies are focusing on indigenous management of natural resource and conflict management. However, the study has been delimited the economical and environmental aspects in this study because these require other theories and analysis. Cultural aspect also has not been included in this study. My respondents were from six upazilla of Khagrachari and Rangamati Districts and I had not covered Bandarban District at all. Besides only three out of twelve ethnic groups were interviewed. It was not possible to cover all the ethnic groups due to time limitation; bad transport system and security reason. Though I got the number of filed cases by indigenous and Bengali community in the Rangamati Land Dispute Resolution Commission Office, Khagrachari Office has not provided the number of field cases from the both communities. Obviously the available data could strengthen my analysis.

⁴⁸ Oka, Tomofumi Coded from Lincoln, Y. & Guba, E. G. 1985: 257. *Naturalistic Inquiry*. Newbury Park, CA: Sage.

Chapter Three: Theoretical Framework

This chapter presents theoretical considerations which would keep this study focussed on indigenous rights, particularly indigenous land rights through establishing institutions in a post-war situation and recognizing and establishing customary rights of the indigenous people.

Theorizing Indigenous Rights

Over the last forty years, 'Indigenous people'- become the subject of international law and focal point of anthropological research. The 'term' or 'the concept' emerged internationally with the Berlin Africa Conference of 1884-1885, convened by the Great Powers with the aim of agreeing on principles for the assertion and recognition of their territorial claims in Africa. On that conference, a commitment to the 'protection of indigenous populations' came out with the Article 6 of the Final Act of the Conference.⁴⁹ The Members of the League of Nation accepted indigenous people as a 'sacred trust of civilization' and committed to promoting the well-being and development of the groups in accordance with Article 22 of the Convent of the League of Nations.⁵⁰ In Americas, the term indigenous was used to identify marginalized ethnic, cultural and linguistic groups within state borders rather than the geographically marginalized group within the colonial territories. The Eighth International Conference of the American States, in its resolution XI of 21 December 1938 stated:

“That the indigenous populations, as descendants of the first inhabitants of the lands which today form America, and in order to offset the deficiency in their physical and intellectual development, have a preferential right to the protection of the public authorities”⁵¹

The indigenous issue addressed formally by the United Nations System in 1949, when the General Assembly invited the Sub-Commission to study the condition of indigenous Americans in the hope that 'the material and cultural development of these populations would result in a more profitable utilization of the resources of America to the advantage of

⁴⁹ However the Great Powers used the term 'indigenous' to distinguish between the citizens of nationals of their countries and those persons in Africa who were under the colonial dominations. See details: Erni, Christian (eds.) 2008: 32

⁵⁰ The conceptual framework of the Article 22 was considered with both the colonial domination and institutional capacity. Considering the advanced character of South Africa in 1919, the League entrusted South Africa over the territory and population of Namibia. The League overlooked and did not conceive that in relation to recent Dutch and British settlers the populations of South Africa was itself indigenous. See details: Erni, Christian (eds.) 2008: 32

⁵¹ Ibid

the world'.⁵² ILO Convention No. 107, Indigenous and Tribal Populations, in 1957 premises that the 'social, economic or cultural situation [of indigenous people] hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population' and from 'sharing fully in the progress of the national community of which they form part' and emphasized the 'protection and integration'. The Convention obliges state parties to develop 'co-ordinated and systematic action for their progressive integration' through 'collaboration' rather than 'force or coercion'.⁵³

The 1971, 'Barbados Declaration' called for an engaged anthropology 'which perceives the colonial situation [of indigenous people] and commits itself to the struggle for liberation....providing colonized people the data and interpretations both about themselves and their colonizers useful for their own fight for freedom'.⁵⁴ The International NGO conference on Discrimination against Indigenous Peoples of the Americas, held at Geneva in 1977 emphasized 'the right of indigenous people and nations to have authority over their own affairs', and it set forth a draft declaration of principles calling for the recognition of indigenous people as subjects of international law. The World Conference to Combat Racism and Racial Discrimination, held at Geneva in 1978, 'endorse[d] the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language'. ILO revised the Convention No. 107 after a strong criticism of the Convention as paternalistic and adopted the Convention No. 169 on Indigenous and Tribal Peoples in 1989.

The Declaration of Rio on Environment and Development in 1992 stated that "indigenous people and their communities...have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development." With regard to the promotion and protection of indigenous people' right, the United Nations declared as International Year (1993) and two successive International Decades (1995-2004 and 2005-2015) for Indigenous People. Establishment of the UN Permanent Forum on Indigenous Issues in 2000 was a remarkable advancement on the establishment of indigenous rights, which finally help the Declaration on the Rights of Indigenous People by the General Assembly of the United Nations. The

⁵² General Assembly Resolution 275 (III), May 11 1949: Study of the Social Problems of the Aboriginal Populations and other Underdeveloped Social Group of the American Continent.

⁵³ Barsh, Russel Lawrence 1986: 370

⁵⁴ World Council of Churches, Programme to Combat Racism PCR 1/71 (E). Symposium on Inter-Ethnic Conflict in South America, meeting in Barbados, January 25-30 1971.

declaration stated, “indigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.⁵⁵ International law now accepted that indigenous people enjoy collective rights to the ownership, control and management of their lands and territories; to the exercise of their customary laws; to represent themselves through their own representative institutions. It also recognised that laws, policies and development should not be imposed on them without their prior and informed consent.

Land and Indigenous People

With the concept of *terra nullius*,⁵⁶ the European conquering powers acquired land and ruled over the aboriginal inhabitants. Europeans view that right over land are grounded in productive use of land as both Locke in his *Second Treatise of Government* and Emeric de Vattel in his *The Law of Nations or the Principles of National Law of 1758* put the ideas. Vattel stated:

The cultivation of the soil.....isan obligation imposed upon man by nature. Every nation is therefore bound by the law of nature to cultivate that land which has fallen to its share. There are others who, in order to avoid labour; seek to live upon their flocks and the fruits of the chase. Now that the human race has multiplied so greatly, it could not subsist if every people wished to live after that fashion. Those who still pursue this idle mode of life occupy more land than they would have need of under a system of honest labour, and they may not complain if other more industrious nations, too confined at home, should come and occupy part of their lands...[w]hen the nations of Europe come upon lands which the savages have no special need of, they may lawfully take possessions of them and establish colonies in them.⁵⁷

However, conquering powers since the Romans have recognized that native people should enjoy some measures of self-governance and the right to exercise their customary laws. Colonial laws also affirmed the principles that native people have the right to apply the customary law and represent themselves through their own institutions. In the 18th and 19th Centuries, the colonial powers deal with native people as ‘nations’ and signed treaties with them-often with the aim of cheating them out of their sovereignty and lands.⁵⁸

⁵⁵ Article 1, UN Declaration on the Rights of Indigenous Peoples.

⁵⁶ Identifying an area as *terra nullius* did not imply that there were no people in the area, but that territory was not possessed by a community having a social and political organization.

⁵⁷ Dodds, Susan 1998: 190 coded from Tully, ‘*Aboriginal Property and Western Theory: Recovering a Middle Ground*’.

⁵⁸ Colchester, Marcus 2002: 2

When British colonized India, they viewed vast tracts of Indian forests as impediments to the prosperity of the colonial exchequer. In 1855 they issued a memorandum titled “Charter of Indian Forests”, and create Forest Department in 1864. They passed the Indian Forest Act of 1865, under which any land covered with trees or brushwood could be declared forest, and the government laid claim to it all. After thirteen years, they bring an amendment as the Forest Act of 1878. This version curtailed centuries-old, customary use right. The Forest Act of 1878 established that forest used by villagers was not a right but a privilege of concession given by the government.⁵⁹

After 1860, when the British took control of the Hill Tracts, the administration initiated a policy of curtailing the rights of the indigenous people to the forests and introduced two types of forest. By 1882-83, about one fourth (24 percent) of the total area of the Hill Tracts-1,244 sq. miles became Reserved Forest.⁶⁰ However, the British has not totally abolished the traditional rights of the CHT indigenous people. They passed the CHT Regulation 1 of 1900 (Bengal Act of 1900). This sought to identify, define and declare various customary rights and privileges for the CHT indigenous people. It has given the right to ‘occupy’ homestead land in rural areas⁶¹ and the right to use timber, bamboo and other ‘minor’ forest produces for bona fide domestic purposes.⁶² And the British taxation system in the Chittagong Hill Tracts was based on the person and not on the land.⁶³ R. H. Sneyd Hutchinson, who served as a Police Officer in CHT states that “this tax is a tribute payable to the State; it is no way partakes of the nature of rent, or bears any relation to the land cultivated.”⁶⁴ Bangladesh authorities considered indigenous people as ‘nomadic tribes people’ who were constantly on move and question about the traditional land rights. However, the myth is not correct. Hutchinson provides a detail description about the relationship between ‘*juming*’ and ‘nomadism’ in the CHT. He states:

“Now as regards the supposed tendency of *juming* to encourage the nomadic habits of the Hill tribes, this is quite a mistaken idea. The very great majority of villages are permanent and have occupied their present site for a very large number of years. Take Bandarban for instance; this is the largest of the Hill villages and its population is entirely *jumeah*, but it has occupied its present site for more than 80 years and will continue to do so. The same may be said for all the principal villages.”⁶⁵

⁵⁹ Mathur, Hari Mohan 2009: 173; Mitra, Kinsuk & Gupta, Radhika 2009: 195

⁶⁰ Roy, Rajkumari Chandra 2000: 69

⁶¹ Rule 50

⁶² Rule 41 A; Forest Act of 1927

⁶³ British administrative authorities were limited mainly with the indigenous institution, namely the chiefs or rajas and their head man to collect jum tax, which was paid annual basis. And no direct connection with land.

⁶⁴ Roy, Rajkumari Chandra 2000:57 coded from Hutchinson 1909:33.

⁶⁵ Roy, Rajkumari Chandra 2000:52 coded from Hutchinson 1906:51-54.

However, I am aiming to find out whether or not Indigenous people in the CHT have rights to claim their traditional land rights. Which they have used and occupied for centuries, including through juming, hunting-gathering and other traditional economic activities as Saami reindeer husbandry communities gained their traditional land rights?⁶⁶

ILO Convention No. 107 contains the first and to date the only binding standards on indigenous land rights. It recognizes ‘the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy’ same time their customary laws regarding land use and inheritance and their right to be compensated in money or in kind for lands appropriated by the national government for development purpose.⁶⁷ Ambassador José R. Martinez Cobo, in his Sub-Commission study of ‘‘discrimination against indigenous populations’’ in the year 1983, concludes that ‘‘indigenous people have a natural and inalienable right to keep the territories they possess and claim the lands which have been taken from them’’ and it processes detailed standards for the reconciliation of land rights.⁶⁸ In the working group’s third session in 1984, on the governmental level Australia announced plans to give aboriginal communities ‘inalienable freehold title’ to traditional and sacred lands, with a veto over developments,⁶⁹ and Canada described its ongoing land claim process, emphasizing its view that settlements must be negotiated, ‘not imposed unilaterally’. In that session indigenous representatives jointly submitted a proposal, and the working group annexed this text without comment to its report;

That the Working Group recongniz[e], as did the World Conference to Combat Racism and Racial Discrimination of 1978, ‘the special relationship of indigenous peoples to their land and.....that their land, land rights and natural resources should not be taken away from them’. Discovery, Conquest, and unilateral legislation are not legitimate bases for states to claim or retain the territories or natural resources of indigenous peoples. In no circumstances should indigenous peoples or groups be subjected to adverse discrimination with respect to their rights or claims to land, property or natural resources.⁷⁰

In the fourth session, Argentina Government described the loss by the Indians of their land and their lack of legal title to what they still occupied, and committed itself to recognizing

⁶⁶ Swedish Supreme Court on 29 January 1981 rejected the governments claim that Saami people are nomadic and cannot acquire title to land. The Court state that Saami can acquire land by using for traditional Saami economic activities such as reindeer husbandry, hunting and fishing without engaging in settled farming or having a permanent dwelling.

⁶⁷ Barsh, Russel Lawrence 1986: 370

⁶⁸ Ibid: 371

⁶⁹ Ibid: 380. At the working group’s fourth session, aboriginal observers accused Australia of reneging on this commitment, on the basis of statements of the Government’s responsible minister that questioned the practicability of recognizing an aboriginal veto over mining. Australia assured the working group that the matter was still under review.

⁷⁰ UN Doc. E/CN.4/Sub.2/AC.4/1984/WP.1.

and restoring ownership to them, 'in accordance with their own organization and customs'. Mexico also emphasized on the need for land reform and warned against development programs that result in policies actually recognizable as ethnocide.

Peace Agreement and Post-Accord Indigenous Land

Rapid population growth, constantly changing climate conditions and absence of proper land policies makes this world a vulnerable place. And land conflict was a significant driver of social, political and environmental change throughout the 20th century.⁷¹ Land conflict usually occurs when claims are grounded in formal state law versus informal or customary claims or where overlapping rights were granted to parties under different legal regimes or where overlapping and competitive rights have been granted to different parties for the same land.⁷² The struggle for land has also been identified as a source of internal strife in countries such as Bangladesh, the Philippines, South Africa and Israel and the precipitate factor of war between Senegal and Mauritania and El Salvador and Honduras.⁷³ Land furthermore played a catalyst role in many secondary conflicts, such as in Kosovo, Afghanistan, Somalia and Iraq.⁷⁴ Land is a critical element in peace-building and economic reconstruction in post-conflict situations⁷⁵ as it plays the major role in respect to the return of refugees and IDPs, affecting both the choice of return and prospects for recovery.

Usually a peace accord or treaty resolves a spatial contest in a macro sense, but often implementation of accord constitutes the re-establishment of tenure security, land registration and its administration (what they [still] mean and what not and how to use them) are complicated and hard to resolve.⁷⁶ Concern about land and understanding about ownership, use and access to land for refugees and IDPs rarely incorporated sufficient analysis of the local land tenure situation. It is fair to say that land policy as an element of peace building mission, tends to be under-rated and has received little attention in the literature. Conflict over land often combines strong economic and emotional values,⁷⁷ and often economics and political frequently mingle with other influences like law, public administration, and culture.⁷⁸ ILO Convention No. 169 states that 'land rights' are the most important rights.

⁷¹ Simmons, Cynthia S. 2004: 183

⁷² USAID 2005:3

⁷³ Simmons, Cynthia S. 2004; 183

⁷⁴ Molen, Paul van der and Lemmen, Christiaan 2004: 5

⁷⁵ USAID 2005: 2

⁷⁶ Unruh, Jon D. 2002

⁷⁷ OECD 2004

⁷⁸ USAID 2005: 3

Many of the current conflicts over land and territory relate to the possession, control, exploitation and use of natural resources. Even many countries, state itself keeps the right to control such resources and in numerous instances multinational corporations are asserting their own economic interests over them, unleashing complicated conflicts over ownership and use-rights with indigenous people. In Chile, one law recognises de rights of indigenous communities to their lands, but other laws allow any private party to claim possession of subsoil and water resources on them.⁷⁹ In Mexico, the Zapatista uprising in 1994 put the issue of indigenous rights squarely on the national agenda and a peace agreement signed in 1996 but still remained in paper. In 2001 governments passed a constitutional reform on indigenous issues that deviated from the agreements and further stalled the peace process. In Guatemala, Maya's identity and rights were recognized by the peace agreement of 1996, but still access to land and resources remain the main problem of the indigenous community, though they constitute more than half of the national population.⁸⁰ In Afghanistan, establishment of a well functioning land administration and cadastre still a big challenge for the central government and international community. Government land appropriation and resettlement schemes can be also notorious for causing conflict and tension related to competition for land uses and claims, which we can find in the case of Bangladesh, Indonesia and Sri Lanka. Transmigration programme of the Bangladesh government in the Chittagong Hill Tracts (CHT) had started in the Pakistan period, increased Bangali settlers from 26,000 to 119,000 between 1951 and 1961. After the independence of Bangladesh, especially in the year 1979 and early 1980s, displaced another 100,000 jhumia people, and marginalised them in their own homelands.⁸¹

⁷⁹ Stavenhagen, Rodolfo 2005: 2

⁸⁰ Ibid

⁸¹ Roy, Raja Devasish 2004: 152

Chapter Four: History, Conflict and Land in CHT

To situate the subject matter of the study, this chapter will discuss the state's hegemonic approach⁸² to the peoples of CHT. How successive British, Pakistan and Bangladeshi Governments' rule have selectively overlooked, destroyed and changed the traditional rights of CHT people and some of the consequences of such discriminatory policies, are discussed in this chapter. Nation building issues both in the Pakistan (1947-1971) and Bangladesh period have formed in several direct and indirect ways the institutions, living conditions and rights of the people of CHT. Their response from the late 1970s onward was a politically led armed struggle for self determination. How the Government of Bangladesh reacted and used both massive coercive power and other "softer" means, in order to suppress the movement are to be highlighted in this chapter. The quite complicated, not much known (neither in media or in academic literature) fragile political negotiation process leading up to the signing of the Peace Accord in 1997 will finally be discussed. A short pre-colonial history is also given to understand the political situation before the British took over CHT. The role of this chapter in addressing the main topic of this thesis is to highlights the historical and political context which being used to suppress indigenous people movement and abolish their traditional land rights.

Before the British colonial period, the history, which now termed the Chittagong Hill Tracts (CHT), is either incomplete or mostly inaccurate with the absence of dependable relevant sources. The Hill tribes moved in CHT mainly from Myanmar (earlier Burma), during the period from the 15th to 19th Centuries. The tribes belonging to the Kuki group were the earliest to settle and Chakmas came much later.⁸³ Almost entire part of CHT was covered with dense forest. Shifting cultivation was the only agriculture practiced by tribal people to meet subsistence requirements. Cereals, oilseeds, vegetables and cotton were inter-cropped with the help of dibbles. Rice and Indian corn were the major cereal crops, while mustard and sesame (*Sesamum indicum*) were the major oil seeds cultivated for household consumption.

⁸² The concept of 'hegemony' has different meaning in different context. Generally it means a form of domination. It serves to impose the rules and enforcement that allows the inter-state system to function over time. Hegemony in the more generic sense, meant by Antonio Gramsci as the way in which a ruling group establishes and maintains its rule. The idea of hegemony presupposes that domination is built by giving concessions to the subordinated group. This accommodating approach enables the ruling class to transform the values and cognition of the subordinated group, split oppositional forces, and win consent from at least some fractions of the dominated group. Robinson, William I.2005: 560

⁸³ Shelley, Mizanur Rahman 1992: 26

Cotton was produced to weave cloths for household use.⁸⁴ Mughal's influence in CHT mainly started in 1666 and increased continuously. Chakma Rajas used Muslim name, such as, Rattan Khan (1673), Jalal Khan (1715-25), and Shermust Khan (1737-58). However, there is no clear evidence, whether they had been converted to Islam or only use Muslim name to keep the awesome Mughal power at the bay of Chakma. To meet some daily necessities e.g. dried fish, chicken, salt, tobacco, molasses, black cloth etc., which were not available in the Hills, Jalal Khan requested Mughal administrator of Chittagong to permit Bengali merchants to trade with the tribal people and voluntarily agreed to pay an annual cotton tribute to the Mughal authorities. And the entire area came to be known as the Kapas Mahal or the Cotton Area. In 1724, he refused to pay the tribute and consequently attacked and defeated by the Mughal Dewan, Kishan Chand, a Hindu. He had to flee to Arakan and died afterwards. By 1737, Shermust Khan yielded to the Mughal authority and a new administrative post designed as Dewan had been introduced in the Chakma tribal administration and continued up to 1900.⁸⁵

The British Period (1760-1947)

By 1760, Bengal had come under control by the British East India Company. The region called the Hill Tracts was annexed after defeating the Chakma Raja Jan Box Khan and his general Ranu Khan Dewan in 1778. It shares boundaries with Indian states of Tripura to the north, Mizoram to the east, Chin and Rakhain states of Myanmar (Burma) to the south-east and south and to the west the Chittagong Districts of Bangladesh.⁸⁶ A Peace Accord was signed by the Chakma Raja at Fort William, Calcutta, with the British Governor General Lord Cornwallis. The losing party was forced to pay an annual tribute about 20 maunds of cotton to the British for the right to trade. This tribute was later extended to the indigenous Marmas also, the second largest indigenous group in CHT who migrated from Arakan. In the year 1789, the tribute was changed from cotton to cash and each married man had to pay Rs. 3 or 4 annually.⁸⁷ The changing tribute came as a burden for the diverse Hill population and to pay the taxes in cash Hillpeople dependent upon the Bengali traders⁸⁸ who established

⁸⁴ Rasul, Golam & Thapa, Gopal B

⁸⁵ Shelley, Mizanur Rahman 1992: 27

⁸⁶ Roy, Rajkumari Chandra Kalindi 2000: 18

⁸⁷ Mohsin, Amena, 1997: 80 cited from Mackenzie

⁸⁸ Before the British Rule, Chakma Raja also had to pay 11 maunds of cotton tribute to the Mughal to trade with the Bengali beparies (merchants). From that time Bengali controlled and manipulates the market. Often Hillpeople had to sell their products at nominal prices and often forced to borrow money with high interest, even sometimes 600 percent. Within in 1846 the HT revenue had risen from Rs. 5703.13 to Rs. 11803. Mohsin, Amena 1997: 80; Roy, Rajkumari Chandra 2000: 40; May, Wolfgang 1984: 79.

themselves as belonging to a superior status group. The British Crown took control over the CHT from the British East India Company after the Santal movement⁸⁹ as the scale and brutality of the Rebellion became known to the native forces in 1857-1858.

The Crown passed the Regulation Act No. XXII in 1860, which made CHT into a separate District. With the concept of *terra nullius* in 1864, the Crown rejected the claim of ownership of land by the native Chiefs and stated that “the chiefs of the CHT have no title to the ownership of the land which is vested exclusively in the Crown: they exercise only the delegated right of collecting taxes and rents on behalf of Government.”⁹⁰ In 1881, the British introduced territorial Chiefs/Rajas and divided the CHT into three so-called circles. An administrative officer was assigned for each circle under the Deputy Commissioner. With this the Circle Chiefs lost their power over all civil, criminal and juridical matters, except their authority to make rulings on so-called customary matters. To fulfil the huge demand for railway sleepers, which were being used to increase the railway network under construction within the vast territorial domain of British India, the Government declared 1356 square miles out of 5146 square miles as reserved forest. This area covered more than 25 percent of the total land of CHT.⁹¹ Restrictions were imposed on the native populations’ rights over their ancient region’s vast forest resources. This was done in the name of protection of forest, completely ignoring that these vast forests had been an integral part of their economic, social and cultural institutions and ways of life for many centuries.⁹² Another motivation behind the Britishers’ impositions was to bind the native people to start cultivation by plough instead of by fire and stick (*Jum* cultivation). Captain Thomas Herbert Lewin, the first Deputy Commissioner in the CHT stated; “introduction of the Reserve Forest Act for the prohibition of shifting cultivation (for) Hillpeople will influence plough cultivation.”⁹³ The CHT Manual explicitly prohibited, restricted and regulated the migration of cultivating *ravats* (farmers) from one circle to another. The provision of Article 41 empowered the Deputy Commissioner to regulate and declare any area closed to *Jum* cultivation and to restrict the expansion of

⁸⁹ Bleie, Tone 2005: 107-112

⁹⁰ Mohsin, Amena 1997: 87

⁹¹ Tripura, Sontosh Bikash 2008: 38 coded from R. H. Sneyd Hutchinson 1909:72-74

⁹² Tripura, Sontosh Bikash 2008: 36-40, Mohsin, Amena 1997: 87, Mey, Wolfgang 1984. 95, Bleie, Tone 2005:109

⁹³ Tripura, Sontosh Bikash 2008: 41 coded from Lewin, Captain T.H. Wild races of south-eastern India 1870, translated by Chakma, Bikash, Gyanendu 1998:20-24. Though the main objective was to introduce the plough cultivation to collect more revenue, it also helped to consolidate and enhance their political position. From the *Jhum* tax the chief received the 50 percent tax or Rs. 2 from each *jhumia* family and the rest 50 percent divided equally between headman and the British government. On the other hand, from the plough cultivation the local authority, chief and headman did not get any share, and it decreased the dependence of the state upon local functionaries (i.e. chiefs, headman and *karbaries*).

Jum cultivation to new territories, without giving any reason. The Regulation also destroyed the region's ethnic and cultural diversity, by bringing all the clans and tribal divisions under the control of three chiefs. The Manual did not have any provision whereby the local people or their representatives could formulate rules for themselves. The ancient category of common land was undermined. Rule 34 had left scope open for acquisition of land for various commercial and residential purposes.⁹⁴ In most of the acquisition cases, Bengalis were claimants of the lands. Private land ownership was a new phenomena and created an incipient class of landowners who started using natives as day labourers in the changing Hill society. In early seventies about 10 percent of the region's farmers owned more land than they could use for themselves.⁹⁵ High quality forested or cleared land was given to European entrepreneurs for tea, coffee, orange and teak plantations.⁹⁶ This critical and dramatic shift in land rights and management practices, eroded cohesion and solidarity in the tribal hill society, and undermined their egalitarian and redistributive norms and practices.⁹⁷

The Pakistan Period (1947-1971)

CHT leadership failed to include CHT with India⁹⁸ and the Bengal Boundary Commission headed by the Cyril Radcliffe awarded the CHT to Pakistan.⁹⁹ The CHT leadership vehemently opposed the annexation and hoisted Indian and Burmese flags in CHT. The Pakistan Government sent Baluch Regiment to lower the Indian Flag in Rangamati and Burmese Flag in Bandarban. Taking notice of these occurrences, the Pakistani leadership branded the Hillpeople as 'pro-Indians'. Interestingly they were not accused for being 'pro-Burmese'. The Government of Pakistan started to administer CHT centrally from Lahore which was situated at a geographical distance. In 1956, the Pakistani Constitution gave CHT a special administrative status as an 'Excluded Area'. Less than a decade later, in the year

⁹⁴ Mohsin, Amena 1997: 34

⁹⁵ May, Wolfgang 1984: 80

⁹⁶ Mohsin, Amena 1997: 92

⁹⁷ Adnan, Sapan 2004: 39

⁹⁸ With the view of secular poster of the Indian National Congress and being 95 percent non-muslim rehabilitee area, Chakma elites approached the Congress leaders and pleaded for the merger of the CHT with the Indian Union. Though initially Congress leaders covert efforts to incorporate CHT in India but remained conspicuously silent on the issue of CHT, when they submitted memorandum on 16 July 1947 to the Boundary Commission. They only asked to include West Bengal with India. The CHT leadership were also divided in this issue. Three chiefs first demanded the recognition of each their circles as 'native states' from the British, the Congress and the Muslim League. Later confederation with Indian states of Tripura, Kuch Bihar and Khasis. The Marma chief suggested union with Burma. Kamini Mohan Dewan (a chakma notable) preferred a constitutional monarchy like the British model. Sneha Kumar Chakma preferred a republican form of government. See details- Mohsin, Amena 1997

⁹⁹ The Muslim league claimed that East Bengal had no source of power except development of hydroelectricity and the only source is Karnafuli River. Besides economic life of HT people depended on upon East Bengal. So, CHT should be included with Pakistan. See details-Mohsin, Amena1997

1964, the Constitution was amended. The status of the CHT was changed from that of an 'Excluded Area' to a 'Tribal Area'. There were many such tribal areas in erstwhile West Pakistan. As part of the amendment, the Pakistan Government withdrew Rule 51 of the CHT Manual about the special provision of the authority of the District Commissioner to expel non-Hillpeople from the Hill region. Rule 34 was also amended and non-Hillpeople were now allowed to enter the Hill region and to live there to fifteen years.

In the year 1953, the Government established Karnafuli Paper Mill in Chandraghona, presently under Rangamati District and created another category of forest called 'Protected Forests (PF) in 1962, apart from two other forests created by the British to supply bamboo and softwood lumber for the paper mill.¹⁰⁰ The native Marma people were displaced from their forested realms and most of the new jobs in the new factories were taken by West Pakistanis and Bengalis. The Hillpeople composed only one percent of the workforce and occupied the lower-skilled positions only.¹⁰¹ The huge Kaptai Hydroelectric Project (1959-63) was established without any prior environmental or social impact assessment. There were no consultative or participatory measures involving the indigenous people in this huge prestigious project at any stage of formulation or implementation. About 10,000 farming families including 8,000 Jhumia families, totalling more than 100,000 people, were displaced by the huge dam which flooded 54,000 acres of cultivable land. About 40 percent of the total settled cultivable land of the District submerged by the dam.¹⁰² Though 280 million Rupees were allocated for the rehabilitation purposes, only 20 million Rupees were released for proper rehabilitation.¹⁰³ The government did not find enough land for rehabilitation and as a result large number of tribal, mostly Chakmas migrated over to the Indian states of Tripura. The Government also transferred all the local indigenous employees under District administration over to other Districts of East Pakistan by the mid-1960s. They were replaced by in-migrating Bengali officers who were charged with most offices including the education sector.¹⁰⁴ Bengali became the medium of education. The Hillpeople, who spoke some ten languages, belonged to the Tibeto-Burmese language group and to the Indo-Aryan branch lost their rights to education in their own mother tongues.

¹⁰⁰ Mohsin, Amena 1997: 35-40, 105-106

¹⁰¹ Mohsin, Amena 2003: 26

¹⁰² Roy, Rajkumari Chandra 2000: 96

¹⁰³ Shelley, Mizanur Rahman 1992: 31

¹⁰⁴ Mohsin, Amena 1997: 46

The Bangladesh Period (1971-)

The Province of East Bengal of erstwhile Pakistan declared its independence on 26 March 1971, setting in motion one of the bloodiest wars in the latter half of the 20th Century. The country was liberated on 16 December 1971, after a bloody war, involving intervention by India. During the liberation war, some Indigenous leaders supported the Pakistani regime.¹⁰⁵ Unfortunately, the all CHT's Hillpeople were considered as 'pro-Pakistani' by Bangladesh authorities, in spite of the fact that the Pakistani regime themselves considered the CHT population 'pro-Indians'. Following the hard-won independence of Bangladesh, the Mukti Bahini (Bengali Liberation Forces) raided houses and jungles of the CHT in search of Pakistani soldiers and collaborators allegedly hiding in the area. Many indigenous people were tortured and killed in those raids.¹⁰⁶ The Mong Circle Chief and Charu Bikash Chakma appealed Sheikh Mujibur Rahman, asking him to stop this brutal violence in CHT. But the newly elected President and the Government treated the ensuing violence as natural in that volatile post-war situation of retribution and revenge.¹⁰⁷

This course of events and the attitudes of the newly elected leadership indicate that a severe process of alienation was set in force from the very early days of the new state. Sheikh Mujib also rejected the four points demands raised by the Manobendra Narayan Larma, a Member of Parliament from CHT. That were; autonomy for the CHT with its own legislature, retention of the 1900 CHT Manual, continuation of the offices of tribal chiefs and finally, provisions restricting the amendment of the CHT Manual and imposing a ban on the influx of non-tribal people into the CHT. Sheikh Mujib so to say asked the Hillpeople to forget about their century-long legacy as being a Hill realm with their separate legacies and identities the cross roads of South-Asia and South East Asian regions and become Bengalis. He backed his "advice" with a threat to effectively marginalize the Hillpeople by sending a massive wave of new Bengali migrants into the region.¹⁰⁸ In the Constitution of Bangladesh (articles 3 and 6) only one language, Bengali and one Bengali nation are enshrined as the basis of the new nation. None of the other ethnic nationalities of Bangladesh who were citizens of the country were given any recognition.¹⁰⁹ Bangladesh, in order words, declared itself as a unicultural and unilingual nation state in a parliament session on the 23 of January 1974. After the

¹⁰⁵ Mong Circle Chief and Charu Bikash Chakma supported the Mukti Bahini. Bohmong Chief remained non-committal, while the Chakma chief supported the Pakistan army.

¹⁰⁶ Mohsin, Amena, 1997: 56-57

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Bleie, Tone 2005: 163

assassination of Mujib several amendments (described in greater details in Chapter six) were brought into the constitution. In 1979, the Government amended Rule 34 of the CHT Manual and opened CHT for unrestricted immigration and settlement for non-indigenous people from all over Bangladesh.

According to one estimate around 400,000 Bengalis were settled in the CHT between 1979 and 1984, displacing some 100,000 Hillpeople who were evicted from their ancestral lands.¹¹⁰ In 7th June 1988, through the eighth amendment of the constitution, Islam was declared as the state religion of Bangladesh. The ethnic minorities of Bangladesh who were both practising Shamanism, Buddhism, popular Hinduism and Christianity (mostly living in the north-western region and in CHT) found themselves to be minorities both in ethnic and religious sense¹¹¹.

The Vexed Issue of Cultural Nationalism

The question of one national identity of Pakistan was a complex one, which motivated the movement of secessionism which led to India and Pakistan in 1947. The Pakistani leadership brought the concept of 'nation' and 'nation-state' from the western political legacy, i.e. 'a people living in a contiguous territory with the same ethnic origins, similar culture and above all one language', but the Pakistani leaders from the Muslim League, attempted to construct a homogenous nation-state out of complex sub-societies that in most cases were heterogeneous in their composition.¹¹² Keith Callard has pointed out; "it had hardly any history of national unity, people did not speak a common language, they did not have a homogenous culture; they did not even have a geographical or economic unit."¹¹³ Like Israel it is the only other state where religion played a crucial role in its creation, but while Judaism has helped integrate the identities of the multi-ethnic Jewish communities immigrating to the Israeli state, Islam failed to integrate the fissiparous tendencies of the state of Pakistan.¹¹⁴ The Pakistani leaderships formed elite political class largely belonged to West Pakistan. They did not have any root in the mass culture of Pakistan and ignored the demands for sharing economic and political power. They always reacted with selective coercion or bureaucratic persuasion but never by political accommodation. One can say that Pakistan was born with a shallow sense of national identity, developed as a reaction to militant Hindu nationalism,

¹¹⁰ Mohsin, Amena, 2000: 61-70

¹¹¹ Bleie, Tone, 2005: 11-18 and 147-169

¹¹² See details Mohsin, Amena 1997; Islam, Nasir 1981, Asaf Hussain 1976

¹¹³ Islam, Nasir 1981: 56

¹¹⁴ Hussain, Asaf 1976: 919

which became less important, once the objectives of Pakistan was achieved and the external enemies of the Muslim nation (i.e. Hindus and the British colonialists) were removed from the embattled domestic political scene.¹¹⁵ Though Muslim League leadership, influenced by Allama Iqbal's notion of 'Muslim identity,'¹¹⁶ succeeded to mobilize the Muslim masses behind the slogan of Pakistan- a homeland for Muslims, they failed to create a real Islamic state in the Western 'nation-state' sense.¹¹⁷ A majority of the 'ulama' belonged to different Muslim sects and schools of thought, had even opposed the Pakistan movement on the grounds that nationalism and Islam were incompatible. The Quran does not permit political boundaries among the various groups of believers; it speaks of a united 'nations' or believers- the *millat* or the *umma*. An individual who believes in the divine law of Allah-the Quran and owes allegiance to Allah and his prophet is a member of the *millat*, irrespective of his color, race, nationality, or citizenship. The Islamic nation does not have territorial limits, it is rather a Diaspora.¹¹⁸ The Muslim intelligentsia did not make efforts to translate this 'ideology' into a concrete shape, spelling out the future economic, political, sociocultural and religious organization of the new Pakistan. Myron Weiner has pointed out, "The Westernized, largely non-religious leadership which led the preindependence movement was primarily concerned with creating a state with a Muslim majority, free from what they said would be the domination of the Hindu majority in India. They had no desire for an Islamic state".¹¹⁹

During the post-independence era, the sustenance of Pakistan's national identity and the process of national integration have stranded, as a result of immense regional-ethnic diversity and the shifting policies of Pakistani elites.¹²⁰ The economic policies of various central Governments in Pakistan led to a sharp increase in regional and social disparity. Only 51 out of 741 top level policy-making positions (in East and West Pakistan) were occupied by Bengali Officers even nine years after the creation of Pakistan. Business, industrial and commercial entrepreneurs all were living in Panjab, Karachi and Lahore. 98 percent of the

¹¹⁵ Islam, Nasir 1981: 57

¹¹⁶ Allama Iqbal (1875-1938, the poet-philosopher of Muslim India) believed in the unity of an Islamic Society and state, maintaining that an Islamic society could only be preserved by creating an Islamic state. Iqbal viewed Islam as a binding force, which was assumed to integrate the Muslims, consisting of people of various ethnic and linguistic origins. Iqbal's views of nationalism was both ideological (creating a Muslim Community on the basis of Islam) as well as territorial (bringing this community within the territorial framework of a polity). The Muslim League leadership was also influenced by this very notion. Jinnah, in his speech at the All India Muslim League Conference in 1940 stated: "*the Hindus and Muslims belong to two different religious philosophies, social customs, and literatures. They neither intermarry, nor dine together, and they belong to two different civilizations which are based mainly on conflicting ideas and conceptions*".

¹¹⁷ Islam, Nasir 1981: 58

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Ibid

officer corps in the army, navy and air force was occupied by the West Pakistanis. The Pakistan leadership had not taken into consideration the common British administrative strategy of how to rule in the region. British administration had established diverse administrative forms and mechanisms, varying from governor and chief commissioner of provinces to tribal territories and princely states. They divided and ruled the potentially troublesome parts of their vast Empire relatively successfully for long periods. Furthermore, fearing Muslim revivalism in the predominantly Muslim area, they encouraged the growth of ethnic identities.¹²¹ Such policies created inter-cultural alienation and inter-ethnic animosities by hindering the development of tendencies towards integration, unity and cohesion.¹²²

The Pakistani leadership taken for granted that the religious national identity of being a muslim would always prevail in all situations, but it proved to the contrary in the elections of East Pakistan in 1954 and in the elections in both wings in 1970. In the 1970 elections, Awami League won with an overwhelmingly majority (160 seats out of 300), on the basis of regional autonomy in the East Wing and in the West, the Pakistan Peoples Party (PPP) won an absolute majority (81 seats out of 300) on a socialist program. The right wing political parties which emphasized Islam as the bond of unity and which went to the polls with programs based on 'Islamic Ideology' performed miserably.¹²³ The seeds of secular Bengali nationalism mainly started to grow in 1950s, when the Central Government dismissed the United Front Government, which came power through the 1954 election. Even the Pakistani leadership believed that Bengalis were converted from the low cast Hindus and were still under their cultural influence; Bangla language written in Nagri script, similar to that of Sankrit was identified with Hinduism. The Pakistani leadership decided to have a common language as one of the bases of its nationhood. In 1948, Mohammad Ali Jinnah declared in Dhaka:

Let me make it very clear to you that the state language of Pakistan is going to be Urdu and no other language....Without one state language no nation can remain tied up solidly together and function.

¹²¹ For example, British had created elite of landed aristocrats in the Muslim Panjab through gifts of large tracts of land. And these landlords were more interested in serving the interests of the colonialists than their own compatriots. The British recruited a large number of Punjabi young in the military and make the British Indian Army 'Punjabized'. Hussain Asaf 1976: 922 coded from H. Gardezi 1973: 132. "Neo-colonial Alliances and the Crisis of Pakistan" in K. Gough and H.P. Sharma, eds., *Imperialism and Revolution in South Asia*. New York. Monthly Review Press.

¹²² Ibid. coded from M.F. Goldman (1974). "Political Change in a Multi-national Setting" in D.E. Schmitt, ed., *Dynamics of the Third World*. Cambridge, Mass: Winthrop Publications.

¹²³ Islam, Nasir 1981: 58

A religious orientation to the same was given by the first Prime Minister of Pakistan, Liaquat Ali Khan in 1949. He stated: *...the defense of Bengali language in front of Urdu, is against the laws of Islam.* The Central Minister for Education openly proposed the introduction of Arabic script for Bengali.¹²⁴ The interesting thing is that about 14 percent people speak Urdu in West Pakistan. The Pakistani leadership was not sure how to interpret Islamic ideology, what does it really mean? Islamic ideology was a vague.¹²⁵ In 1952, Pakistani authorities open fire on students in Dacca, who were protesting the imposition of Urdu as the sole national language. Four people killed in the protest and they instantly become national heroes, and 21 February henceforward became a day of national glory and forerunner to Bengali nationalist movements.¹²⁶ Through the language movement Bengali nationalism acquired a secular and cultural form as language and culture replaced religion as the basis of their identity. It was a construction, in which the Hillpeople of CHT had no space, as they do not speak Bangla and culturally different from the Bengalis. In 1954 national elections, a Chakma leader, Kamini Mohan Dewan elected Member of Parliament, as an independent candidate from CHT, without any association with the United Front. The Hillpeople of CHT were also not included in the Awami League's Six Point program in the 1966. During this entire period, neither the Awami League leadership attempts to incorporate the Hillpeople in the movement nor any CHT leadership tried to associate them in the new development. Hillpeople considered the movement as a political struggle between the Bengalis and West Pakistanis. In the 1970 elections Awami League candidate, Charoo Bikash Chakma defeated by the independent candidate, Chakma Raja Tri Dev Roy. Of the two seats Awami League could not win in 1970 elections in East Bengal, CHT was one of them. CHT leadership was totally indifferent towards these developments and were not part of any brands of nationalism, which was developing in East and West Pakistan.¹²⁷

The Pakistani leadership chose the dominant community to be the model of nation, while the sub-ordinate or minority communities were expected to assimilate themselves with the dominant or mainstream. During the Ayub era, instead bureaucracy, army became the symbols of Western domination over the East. The West Pakistan leadership tried to manage the East Pakistan crisis in military means, resulted 30, 00,000 people dead and thousand of women being raped. Attempts are also being made by the sub-ordinate communities to challenge the dominant view of nationhood. Which we can see in the case of 'Jumma Nation'

¹²⁴ Mohsin, Amena, 2000: 39

¹²⁵ Islam, Nasir 1981: 58

¹²⁶ Mohsin, Amena, 1997: 40 coded from Mallick 1992: 562-563

¹²⁷ Ibid

building in Chittagong Hill Tracts of Bangladesh.¹²⁸ The refusal of accept the Hillpeople as a separate identity seeds the notion of Jumma nationalism-an identity and singled the formal break of the CHT from the state sponsored model of nationhood with the formation of PCJSS.¹²⁹ Mujib did the same wrong as Jinnah had sown the seeds of Bangali Nationalism by imposing Urdu language upon the Bengalis. M. N. Larma, a Parliament Member refused to endorse the 1972 Bangladesh Constitution, [Article 9 defined the basis of state nationalism as Bengali nationalism] by arguing:

“You can not impose your national identity on others. I am a chakma not a Bengali. I am a citizen of Bangladesh, Bangladeshi. You are also a Bangladeshi but your national identity is Bengali.....They [Hillpeople] can never become Bengali’”.¹³⁰

In an electoral speech at Rangamati in 1973 Mujib declared from today onward the tribals are being promoted into Bengalis. However, this notion was strongly rejected by the Hillpeople. The PCJSS wishes to achieve ‘Jumma’ identity based more on social-political than on cultural characteristics. During the post-independence period, Bangladesh suffered from an ideological differentiation as opposed to ethnic differentiation. A homogeneous Bengali identity did not prove to be a potent tool for coping with post-independence problems. Rashiduzzaman pointed out, “Bengalis demonstrated a separatist nationalism fed by the economic grievances against Federal Government.....But Bengali leader failed to develop any sound political organization’”. Anti-Indian feelings had led to change in the emphasis on secularism even during Mujib’s regime. After Mujib assassination, particularly under the General Zia regime, the Islamic ideology and identity have been reinstated. The move towards islamisation was obviously aimed at appeasing the dominant majority community of the state and to secure the support from military.¹³¹ General Zia formed the Bangladesh Nationalist Party (BNP) to run in the election. The BNP election manifesto defines Bangladeshi nationalism as:

Religious belief and love for religion are a great and imperishable characteristic of the Bangladeshi nation...the vast majority of our people are followers of Islam. The fact is well-reflected and manifest in our stable and liberal national life.¹³²

¹²⁸ Ibid

¹²⁹ Ibid: 58

¹³⁰ Mohsin, Amena, 2003: 23

¹³¹ There was a hidden clash between military and Mujib regimes. Mujib created Jatiyo Rakkhi Bahini (National Defence Force) with Indian advice and assistance, which military seems a threat for them. Mujib also bring reduction in defence allotments in the annual budget.

¹³² Mohsin, Amena, 1997: 68 coded from Ghosanapatra 1978: 3-4

Bangladeshi nationalism draws a territorial line between Bengalis of Bangladeshi and Bengalis of West Bengal, India. Bangladeshi nationalism as it evolved in 1975 was, in essence, a reassertion of the Muslim identity of the Bengalis in Bangladesh. Islamic ideals were incorporated into the Constitution. Bismillahir-Rahmanir-Rahim (In the name of Allah, the Beneficent, the Merciful) was inserted at the beginning of the constitution by the proclamation of Order No. 1 of 1977. The principle of secularism was dropped from the constitution. Ministry of Religion was established and religious studies made compulsory in all schools.¹³³ Thus the new model of nationhood thereby bred two kinds of communalism, religious as well as nationalistic. There was no space for accommodating the Hillpeople of CHT in this new construction. After the murder of Zia, General H.M. Ershad moved towards a more straightforward 'Islamic nationalism'. Islam was declared as the state religion of Bangladesh. Religion as well as culture was being used as tools of domination in minority as well as for the CHT people. Historical experience helped PCJSS to build Jumma identity as the Hillpeople share unique historical experience beleaguered by outsiders and being stressed by the possession of a Jumma *homeland*. They lost their land to the British and subsequently by the Bengalis.¹³⁴ PCJSS described in 1987:

“The Chittagong Hill Tracts is the homeland of ten linguistically different *Jatis* (nationalities or communities): the Chakma, Marma, Tripura, Bawn, Lushai, Mru, Pankho, Khumi, Khyang and the Chak. For centuries, these ten linguistically different *Jatis* have inhabited CHT and maintain their own communities, culture and language. Every nation in the world, either big or small, tries its best to uphold its national identity and solidarity. The ten linguistically different Jumma people of CHT are no exception to this’.¹³⁵

As a social identity it distinguishes the Hillpeople from Bengalis and others. As a political identity it claims certain rights, 'provincial autonomy' of the Hill Tracts and resource rights. PCJSS always avoided taking the indigenous identity. First of all, PCJSS had been attempting to create a common identity of Jumma for Hillpeople, who differ in ethnicity, language and religion and an ideology of indignity would undermine their efforts. Second, Jumma identity had been popularized and familiarized since 1970s. Third, the Bengali acronym of the term indigenous is *Adivasis*, which literally means 'first inhabitants' and is generally used to refer to the plain land 'tribes' such as *Santals*, *Mounda* and so forth, who are said to have been the descendants of 'pure Dravidian' stocks but Jumma are not.¹³⁶ There are also various obstacles to the acceptance of Jumma nationalism. First, Jumma identity will

¹³³ Ibid

¹³⁴ Schendel, Willem Van 1992: 123

¹³⁵ Chowdhury, Khairul 2008: 67

¹³⁶ Ibid

have to compete with distinct local group identities, that are well established and do not have shown sign of fading. Second, acceptance of the Jumma identity depends on the degree to which old inter-group perceptions can be neutralized. Marmas and Tripuras argue that Jumma is a Chakma word and since the PCJSS is overwhelmingly a Chakma dominated institution, so there exists the very real fear of Chakma hegemony in this construction itself.¹³⁷ Bangladesh Government either ignore the Jumma identity or denounce it as a figment of the imagination of some mis-guided chakma ‘miscreants’, who try to disturb peaceful relations between Bengalis and Hillpeople by means of illegal organization.¹³⁸

Militarization of CHT

Militarization of CHT mainly started in the early year of the British rule. British established a para-military unit to guard the eastern frontier and to curb arms smuggling in their new ‘Chittagong Hill Tracts District’. In 1870s, there was one military policeman for every 96 inhabitants of the Hills.¹³⁹ After partition, Pakistan Government deployed the Baluch Regiment to crush the local resistance (discussed earlier in this chapter) and in 1948 disbanded the Frontier Police Force. Central Intelligence Agency (CIA) of the USA also used the CHT until 1962 Sino-Indian border war, to covert operations against Chinese’s authority in Tibet, with the help of Inter Services Intelligence (ISI) of Pakistan. Z. Phizo’s Naga National Army also operated its insurgency against Delhi’s authority. Mizo also received assistance to operate from remote CHT bases at Ramu, Bolipara, Mowdak and Thanchi. In 1969 when Awami League back down from its autonomy plan, CHT port became busy for servicing military troops. In March 1971, President Yahya Khan postponed the National Assembly for an indefinite period and decided to crush the autonomy movement of East Bengal by military power.¹⁴⁰ After the Independence of Bangladesh, indigenous leadership demanded for regional autonomy of CHT within the state of Bangladesh. Unfortunately, Bangladesh leadership interpreted the Hillpeoples’ demand as secessionist and identified the CHT as a ‘national security’ problem. After the refusal, CHT leader, Larma established the political party PCJSS and its’ military wing *Santi Bahini* (Peace Force). To break the tribal insurgency Government has sent the 24th Infantry Division, and consequently the CHT has

¹³⁷ Mohsin, Amena, 1997: 194; Schendel, Willem Van 1992: 124

¹³⁸ Schendel, Willem Van 1992: 124. Amnesty International reports in 1988 that the term miscreant is ‘officially used for *Shanti Bahini* forces’. They are also frequently called ‘terrorists’ but the authorities no longer dismiss them as simple criminals. The in words of Major General Abdus Salam, Area Commander of the Chittagong Hill Tracts, as reported in the Bangladesh press: ‘we are not fighting just a bandit group. The insurgents are really quite deep into their mission and they are organized and motivated.

¹³⁹ May, Wolfgang 1984: 20

¹⁴⁰ Mohsin, Amena, 1997: 148-160

undergone full scale of militarization, and military has been given total control of civil administration.¹⁴¹

Amnesty International states that in 1980 between 20,000 and 100,000 armed personnel were active in the Hill tracts.¹⁴² There are four Brigade Head Quarters in the CHT: Rangamati, Khagrachari, Dighinala and Bandarban and two Garrison in Ramu and Alikadam. Besides there is army base camp in each Upazilla and road side and naval base in Kaptai and anti-guerrilla training centre at Mahalchari.¹⁴³ Chairmanship of the Chittagong Hill Tracts Development Board (CHTDB) was given to the General Officer Commanding (G.O.C) of Chittagong Cantonment, who holds all military commands in the CHT. CHTDB has given charge for all kinds of development, including controlling the international aid. However, it is found that about 80 percent of the CHTDB development budget spent on building military infrastructure through construction of military camps, roads and bridges, office building, mosques, cluster villages both for Bengali settlers and Hillpeople. Two hundred camps have been withdrawn from different phases after the 1997 CHT Peace Accord. The present AL Government has withdrawn one brigade of troops and 35 temporary security camps from CHT areas and decided to shift Kaptai and Rangamati brigade to the Chittagong Cantonment. Furthermore government also promised that other camps will be shifted gradually.¹⁴⁴

Land Conflict and CHT

Although CHT leadership demanded self rule of CHT for more than half a century, the issue of land as a separate issue, or as a key issue is not even noticeable up to the 1980s, and came noticeable when JSS submitted five-points demand to the Bangladesh Government, included a demand for the removal of all Bangali settlers who had been settled in the region since 1947.¹⁴⁵ Unruh mentioned that even conflict that had no land component initially can lead to tenure problems in the peace process, due to the spatial nature of both land tenure and armed combat.¹⁴⁶ Nowadays, Indigenous leaderships in CHT often mention that land is the main problem in the CHT. The land scarcity in CHT mainly started during the British colonial period. Nearly the whole region in theory, if not practice, is considered forest and property of the state. Following the Indian Forest Act of 1865, most of CHT was declared as forest in

¹⁴¹ Ibid

¹⁴² May, Wolfgang 1984: 147

¹⁴³ CHT Commission 1991: 39; Ahmed, A. 1993:46, May, Wolfgang 1984: 147

¹⁴⁴ The Daily Star, July 30, 2009.

¹⁴⁵ Roy, Raja Devasish 2000: 3

¹⁴⁶ Unruh, Jon D 2002: 338

1872 (5670 square miles out of 6682 square miles) and was divided into ‘Reserved Forest’ (RFs), under the Forest Department and ‘Unclassed State Forest’ (USFs) or District Forest, under the Deputy Commissioner’s management. Though indigenous people had the right to use USF or District Forest for swidden/Jum cultivation with the permission of DC but they lost their rights to use RF resources. According to some accounts RFs accounted for about one fourth of the total area of CHT by the 1880s.¹⁴⁷ During the Pakistan period, a third category of forest called ‘Protected Forest’ was introduced and temporally forbidden for Jhum cultivation under development schemes. Major land crisis occurred when Kaptai Dam or Kaptai Hydro-Electric Project (1959-63), had been constructed by the Government of Pakistan. This scheme flooded 54,000 acres-nearly forty percent of the most excellent agricultural land, and relocated about 18,000 jhumia families. Many of them fled in the nearby Arunachal Pradesh of India, where they remain as stateless refugees, under constant threat of eviction.¹⁴⁸ After Independence, the Government of Bangladesh has followed the same tradition in extending the forest department’s control in CHT, as well as leasing and acquiring forest lands for Bengali and Jumma settlement, commercial plantations, development and so on.¹⁴⁹ In the year 1979, the Government of Bangladesh amended Rule 34 of the Regulation 1 of 1900¹⁵⁰ and stated that “land for residential purposes may be settled by the DC with deserving persons on a long term lease basis {(Rule 34 (d) (1)}. From 1979-1984, about 400,000 Bangalis were sent to the CHT, under the sponsorship of Governments’ resettlements schemes in exchange for land (for each family: Paddy land 2.5 acres, Plain and Bumpy Mixed 4.0 acres and Hilly land 5.0 acres), cash and other incentives.¹⁵¹ With the figures of table 2 and 4, we can say that large scale migration programme changes the demographic situation of CHT and marginalizes the Hillpeople in their own land both in number and religiously. Table 3 shows twenty two percent land of CHT was available for agricultural and forestry purpose. Out of them, only three percent land was suitable for ‘all-purpose agriculture’, below three percent for terrace agriculture and about 15 percent for horticulture and partly for forestry. Bengali population was only acquainted with plough

¹⁴⁷ Chowdhury, Khairul 2008: 64

¹⁴⁸ Roy, Raja Devasish 2000: 6

¹⁴⁹ Mohsin, Amena, 1997: 125

¹⁵⁰ Rule 34 (1) specified that “no settlement of land in this District shall be made with outsiders without the prior approval of the Board of Revenue.” In addition, non-residents of the Hill Tracts were not allowed to inherit any interest in land “except with the express consent of the Deputy Commissioner who shall have regard to the principles of equity and as far as may be to the rights of the plains men which, but for this rule, would be operative.” {Rule 34 (13)}.

¹⁵¹ Roy, Raja Devasish 1997: 170-175

cultivation. If someone calculates,¹⁵² it is easily understandable that without grabbing the lands of the indigenous people it was not possible to carry out the settlement programme as there was simply not enough land to settle Bengalis in the CHT.

Table 02: Estimates of Hillpeople and Non-Hill population in the CHT

Year	Hillpeople		Non-Hillpeople	
	Number	%	Number	%
1872	61957	98.26	1097	1.74
1901	116063	92.98	8762	7.02
1951	261538	90.91	26150	9.09
1961	335069	87.01	50010	12.99
1974	409571	80.59	98628	19.41
1981	455000	61.07	290000	38.93
1991	501144	51.43	473301	48.57
2001*				

Source: Adnan, Shapan 2004: 57

* Curiously the 2001 census does not provide a figure categorising the Hillpeople and Bengalis in the CHT

Table 03: Soil Types and Land Use Potential in CHT (According to the Forestal Study of 1964-66).

Types of Soil and Land use	'Class' of Lands	Area	
		Acres	%
All-Purpose Agriculture	A	76466	3.07
Terrace Agriculture	B	67871	2.72
Mostly Horticulture & Partly Forestry	C	366622	14.71
Only Forestry	D	1816993	72.91
Horticulture & Forestry	CD	32024	1.28
Settlement		653	0.03
Water Bodies		131637	5.28
Total		2492266	100.00

Source: Adnan, Shapan 2004: 112

¹⁵² If we assume four persons in a family then there were 100,000 Bengali families to settle. And on that basis 500,000 acres Hilly land (100,000 x 5 acres), 400,000 acres Plain & Bumpy Mixed land (100,000 x 4 acres) and 250,000 acres Paddy land (100,000 x 2.5 acres) were necessary.

Table 04: Changing Size and Composition of CHT Population by Religious Groups

Religious Group	Year									
	1951		1961		1974		1981		1991	
	N	%	N	%	N	%	N	%	N	%
Buddhists	215000	74.84	275681	71.59	337586	66.47	394321	52.46	425311	43.65
Muslims	18070	6.29	45322	11.77	95633	18.83	259568	34.53	429954	44.12
Hindus	40984	14.27	47644	12.37	53373	10.51	70583	9.39	87806	9.01
Christians	3745	1.30	10160	2.64	13272	2.61	18973	2.52	22206	2.28
Others	9475	3.30	6272	1.63	8050	1.58	8247	1.10	9168	0.94

Source: Adnan, Shapan 2004: 60

The Chittagong Hill Tracts Peace Accord of 1997

In 1997 the Government of Bangladesh signed a peace accord, the Chittagong Hill Tracts Peace Accord (CHT Peace Accord), with the representatives of the indigenous people. The Accord was the outcome of the long negotiation process primarily initiated by the Government of Bangladesh. During 1970s, CHT was sealed off from the outside world. However, in 1980s, massive human rights violation, massacres of jumma people, burning villages, disappearances, detention without trial, rape, torture, forced relocation news came out for the outside world, when a large number of jumma people fled into the state of Tripura, India. And the conflict gets international attention. In 1977, a Committee under the auspices of the Tribal Convention was formed to intercede between the Government and the PCJSS, however the efforts were disrupted due to internal strictures within the PCJSS and the murder of President Ziaur Rahman in 1981.¹⁵³ International donors pressured the Government to reach in a political settlement. Amnesty International has published regular news of human rights violation in CHT. The CHT Commission (earlier based on Netherland), has published annual reports on the situation and provide information to the donors, such as Japan, the United Kingdom, Denmark, Sweden, France, Germany, Switzerland, the European Commission (EC) and the United States of America.¹⁵⁴ During the Ershad Government period, a series of dialogue took place between 1985 to 1988, with the PCJSS and the Government. Earshad declared general amnesty. A breakaway faction of the PCJSS, head by

¹⁵³ Jamil, Ishtiaq & Panday, Pranab Kumar 2008: 470

¹⁵⁴ Mohsin, Amena, 2003: 14

Priti Kumar Chakma surrendered with some 300 *Santi Bahini* soldiers. From 1983 to 1991, a total of 2574 *Santi Bahini* soldiers surrendered.¹⁵⁵ BNP Government, which came into power in 1991, formed a multi party committee in 1992, with two Parliament Member from AL, four from BNP, one from Jamaat-e-Islami and one from Workers Party. This committee met 13 times with the PCJSS, but failed to reach an agreement, as differences existed between the Government and the PCJSS on the question of political autonomy for CHT and Bengali settlers issue.¹⁵⁶ In 1996, when Awami League Government came into power, Prime Minister Sheikh Hasina requested India to withdraw its support from the PCJSS¹⁵⁷. A National Committee on CHT set up in October 1996 to reinitiate the peace process. With the backing of India, the National Committee of CHT negotiated with the PCJSS and concluded with the signing of a Peace Accord between the National Committee and the PCJSS.¹⁵⁸ An important but largely unexplored dimension of the negotiation process was the little known pre-formal exchange of messages between the parties that has led some to believe that “agreed to agree, whatever the contents of the accord might be”.

There was no third party (other than a liaison agent) during the negotiation time. The Government of Bangladesh categorically rejected the third party mediation.¹⁵⁹ A Government-imposed news blackout and localization of the conflict within the CHT, kept the Bengali population outside the region unaffected and largely unaware of the issue. The Accord vehemently protested by the main opposition Party, BNP and others political parties. BNP submitted 18 points claim about the Accord.¹⁶⁰ BNP Chairperson, Khaleda Zia claimed that the Accord would set up a parallel Government in the country and urged Prime Minister to scrap it.¹⁶¹ Late Mannan Bhuiyan, the then General Secretary of BNP strongly criticised the Government and questioned about the fate of the Accord.¹⁶² Even the PCJSS had not made any attempt to incorporate the Pahari Chatra Parishad (PCP, or Hill Student’s Forum), the Pahari Gono Parishad (PGP, or Hillpeople’s Council) and the Hill Women’s Federation

¹⁵⁵ Lenin, Nooh-UI-Alam 1998: 42

¹⁵⁶ Mohsin, Amana, 2003: 14

¹⁵⁷ Ibid. PCJSS was operating from Tripura, India. Indian government has given shelter, training and other strategic support to the *Santi Bahini* to run the guerrilla operation against the Bangladesh army in the CHT.

¹⁵⁸ Ibid

¹⁵⁹ Roy, Raja Devasish 2003: 20. Formal meetings between the JSS and the Government of Bangladesh were facilitated by one or more members of a ‘liaison committee’ consisting of people trusted by the JSS (one Bengali and the rest, indigenous). However these mediators’ role started and ended with getting the two sides to the negotiating table. The signing of the 1997 Accord without external third-party mediation was boisterously capitalized upon as a ‘unique Bangladeshi achievement’ by the previous Awami League Government of Bangladesh.

¹⁶⁰ Bhorer Kagoj, December 8, 1997.

¹⁶¹ Rashiduzzaman, M 1998: 655; Bangladesh Observer, January 4, 1998.

¹⁶² Bhorer Kagoj, December 6, 1997.

(HWF), though they carried out the movement in democratic manner by networking Bengali women's organizations and student forums both within the CHT and other parts of Bangladesh.¹⁶³ Sheikh Hasina won the UNESCO Peace Prize in 1999 for the accord.

Chapter Summary

The above discussions highlight the state hegemonic aspects and its impact on CHT people. The British destroyed the traditional rights of the Indigenous people and alienated them from indigenous system. For their own economic and administrative benefit they introduced private land ownership system, and make a class system in the society. In the beginning of their rule, British has faced resistance from the indigenous groups and used “divide and rule” mechanism to suppress the nationalism movement of the indigenous people. After the partition of British India, indigenous people gradually marginalised, alinated and exterminated in the ‘nation-state’ building process of Pakistan and Bangladesh. Though they geographically belong to East Bengal and later Bangladesh, they were not incorporated either Bengali or Bangladeshi nationalism process. The state's administrative, developmental and military encroachment into the CHT, which resulted from the nation-state building strategies that both the Pakistan and Bangladesh pursued, slowly led the indigenous people towards marginalization in their own ansestral lands, make them more vulnerable in economically and culturally poor. The failure of the constitutional recognition of indigenous identities in 1972, led to the struggle for autonomy in the CHT, and aimed to preserve a separate identity for the Hillpeople. ‘Jumma identity’ building movement starts with a bid for ethnic innovation, to cope with the political and economic consequence of loss of power, growing expendability to the state and cultural marginalization. However, it is a concern how this new identity will shape in future and whether it would be able to supress the old ethnic identities.

In the next chapter I will discuss about the challenges of institution building in Bangladesh as a post war state and whether history and identity building issues have any impact regarding institution building.

¹⁶³ Mohsin, Amena, 2003: 15

Chapter Five: Analytical Framework

This chapter deals with the challenges which Bangladesh as a post-war state face, in establishing democratic institutions and particularly indigenous institutions in order to bring justice and peace a disputed sub-region, where people rights have been violated and neglected through state mechanisms and policies. How a specially mandated institution like the Land Dispute Resolution Commission can make its activities responsive to both a diverse constituency of indigenous people without ignoring the many Bengali migrants and all the same gain trust and ownership among the Hillpeople, will be given attention.

Post War Institution Building and Indigenous Institution Building

War breaks the social fabric, deepens ethnic divisions and conflict among communities, resulting deaths of people, displacing thousands and destroying the basis for the functioning of institutions. Lack of institutional capacity hinders a society's ability to restore and maintain peace.¹⁶⁴ This may be one of the main reasons why the majority of post conflict countries experience a return to conflict within 10 years in spite of all the efforts to promote peace. Presently, an increasing emphasis has been placed on the crucial role of institutional development in preventing the renewal of conflict. Secretary-General underlines in his 2009 report that institution building should be starting immediately aftermath of conflict. In 21 January 2011, The Security Council convened an open debate considering the importance of institution-building as part of a comprehensive approach to peace building in countries recovering from conflict and on the road to sustainable peace.¹⁶⁵ Institutions play a critical role in settlements negotiated to end civil wars. Many scholars suggest forming alternative political institutions to manage conflict within divided societies and these institutions could be divided into electoral, territorial and administrative categories.¹⁶⁶ Harvey Waterman has noted, "civil wars [often] end in a deal and that....deal is about political institutions."¹⁶⁷ Institutions, broadly defined as rules of competition and serve to facilitate social interaction by reducing uncertainty regarding the regulation of human behaviour.¹⁶⁸ Unfortunately, most of the peace and development intervention in recent decades has been entirely antithetical to

¹⁶⁴ <http://www.bhmisijaun.org/images/BIH/PRST.pdf>

¹⁶⁵ Ibid

¹⁶⁶ Hartzell, A. Caroline 1999: 8; Nordlinger 1972; Lijphart 1977; Horowitz 1985; Smooha and Hanf 1992; Lapidoth 1996.

¹⁶⁷ Hartzell, A. Caroline 1999: 6 coded from Waterman, Harvey 1993: Political order and the settlement of civil wars.

¹⁶⁸ Ibid

indigenous and traditional practices, regarding them as unaccountable, opaque and contradictory to the ‘enlightened’ intentions of liberal peace and internationally sponsored post-war reconstruction efforts. The ‘liberal peace’ or ‘Western peace’ effectively minimizes the space available for indigenous and traditional approaches to be peace-making.¹⁶⁹

Political autonomy and later, national sovereignty, has played an important role in the emergence of Bangladesh, and still continues to do so for many people in Bangladesh. After the hard-won independence in 1971, Bangladesh has faced numerical challenges in building democratic institution and solving national identity issues. Immediately, after independence, the country went under military rule and continued until 1990. Military rulers have suspended the constitution for several years and brought many amendments in the constitution to legalise their rule. They tried to reshape the identity issue in a geographical and religious format without considering the minorities and their religious believes and culture. To remain in power, they used electoral corruption and allowed corruption in every section. The democratic governments which come into power after the military rule make policies often aim to make the democratic and right based institutions feeble. The following paragraph, presents the current situation of some democratic and right based institutions of Bangladesh.

Bangladesh Election Commission now has an independent Secretariat with its own training institute, but still has to depend on government about budgetary and manpower issues. Another contested and often politicised issue is the appointment of election commissioners. Article 118 (1) provides that the appointment of the chief election commissioner and other election commissioners shall, subject to the provisions of law made in that behalf, be made by the president. No laws have been made, as provided by the constitution. So there is a chance of undue government’s influence over appointments of commissioners. The Anti Corruption Commission (ACC), which started its’ journey in 1947 has been restructured a number of times before it got its present independent, self-governed and neutral shape on 23 February 2004.¹⁷⁰ During this long existence, it has largely been effective.¹⁷¹ In the period of last Caretaker Government (2007-2008) the Commission got some degree of dynamism and vibrancy. On April 26, 2010, the present government approved an amendment of the Anti-corruption Commission Act 2004, which incorporated provisions, which obliged the Commission to take government permission before filing graft cases against bureaucrats.

¹⁶⁹ Ginty, Mac Roger 2008: 139-140

¹⁷⁰ Anti Corruption Commission Bangladesh. <http://acc.org.bd/about.php>

¹⁷¹ Transparency International Bangladesh, 2009

This amendment made the ACC accountable to the President, introducing penalties for filing false cases and specifying that the appointment of ACC secretary should be undertaken by the government. Another problem is that Commission has no constitutional base. It has been created by an act of the Parliament.¹⁷² The government of Bangladesh also passed the ‘Right To Information Act’ in 2009 and formed the Information Commission. The Commission has been authorised to issue directives and guidelines, including, ‘regulations’ to guide and direct ‘authorities’ in preparing and publishing lists of information that would be available free of cost.¹⁷³ For its effective implementation, first of all, strong political commitment needed. A time bound strategic framework should be developed with participation of civil society, NGOs, media and implementation bodies. Appointment of the Commissioner must be made with the highest degree of credibility, public trust, professional excellence and capacity, leadership quality and dynamism. Training will help the service officers to cope with the relatively unknown professional expertise and came out from the secrecy mindset. A massive public awareness programme needed to fulfill its objectives. Government has appointed three Commissioners, including Chief Information Commissioner. There is also an allegation about the appointees are somehow linked with politics. In the data collection period, CHT Land Dispute Resolution Commission has denied giving my required information. Even they have not told me the number of cases that they receipt for land dispute resolution. In the future, how policy will develop and mass people get its’ fruit is a big question. The National Human Rights Commission (NHRC) was formed on 1st September 2008 to play a significant role in establishing a culture of respect for human rights with the co-operation of all concerned, including the civil society, the public and private organizations. NHRC has the power to investigate, but no authority to summon, subpoena, or sanction anybody. It has no own investigators and no power to prosecute alleged wrongdoers. This short overview over a number of supposedly important “watchdog” institutions in Bangladesh, suggest there is a general tendency of disabling such potentially democratic and human rights promoting institutions by the political parties which formed government respectively.

The Accord promised semi-autonomy for the CHT by creating institutions and mere transfer of administrative powers to regional bodies by reducing the ‘self-government agencies’ to a sort of peripheral branch of the state administration, subordinated to carry out decisions taken at the centre. Three Hill District Councils (HDC) were strengthened with increasing the number of governance areas under its jurisdiction, adding law and order, secondary education,

¹⁷² The Daily Star. July 30, 2010.

¹⁷³ Section 8.6, The RTI Act 2009

land administration and developmental matters within its authority. The Accord also signalled an intent to enhancing the authority to be exercised by the HDCs over its 'transferred subjects', including enhancing its legislative prerogatives. The HDC Amendments Act of 1998 provided that no lands within the Hill Districts were to be settled, leased out, transferred or compulsorily acquired by the GOB without the consent of the HDC concerned (Clause 29 (1) Ka). The new governance areas have not been transferred through the execution of inter-departmental agreements and memoranda of understanding (MOU). The HDCs were to be provided land revenue incomes from their respective Districts, and to have transferred authority over lower level land administration officials (Clause 29 (2) (both indigenous institutions like the headmen and revenue officials of the GOB). Even so, this provision too is yet to be acted upon. A related provision stated that the HDCs were to receive a part of the royalty from the GOB's incomes from extraction of forest produce and the extraction of mineral resources. In this instance too, no corresponding legislation or other executive measures have been put in place. The HDCs have as yet to gain a role in national decision-making processes regarding the allocation of funds for development-related projects. Theoretically, the HDCs have been authorized to frame regulate various decision-making processes, and to be consulted by the GOB before any rules are passed by the GOB under the HDC Acts of 1989 (and amendments made thereto in 1998). The HDC should have been capacitated to formally request the GOB to refrain from passing any laws that may be detrimental to the interest of the "tribal" people of the Hills. As already noted, its legislative prerogatives remain largely untested.¹⁷⁴ Since the formation of HDC, CHT people have not given chance to choose the representatives of the HDC, those in turn are supposed to be electing the Regional Council. The political parties, which form the government, appointed their party affiliated candidates as chairman of HDCs.

The Parbattya Chattagram Jana Samhati Samiti (PCJSS) demanded a Regional Council (RC) with legislative and administrative power with the hope that it will restore some of the control over the Hill area, thus contributing to fulfil the right to self determination, a right whose importance in the international indigenous rights' discourse has increased tremendously in recent years. The functioning of the Regional Council is one of the primary pre-conditions for any progress in the implementation of the Accord. Moreover, the GOB was obliged to consult the RC before passing any laws that were made applicable to the CHT. A related provision of the Accord stipulates that the RC could advise the GOB to remove any

¹⁷⁴ Roy, Raja Devasish 2004: 297

inconsistencies between the CHT Accord and the CHT Regulation of 1900, which as already stressed is the main legal instrument under which the region is administered. Authority over the police, law and order, strengthening of the role of the Hill District Councils in fiscal policy-making and related matters and the transfer of executive authority to the CHT Regional Council is yet to be effectively implemented.¹⁷⁵ When the Regional Council was established, there was an unwritten clause in the Accord saying the PCJSS should nominate all the 22 members of the RC. Accordingly, the PCJSS had submitted a list to the government with the names of the members to be appointed. However, the government replaced the three Bengali members out of six with their own candidates, all members of the ruling party, Awami League. This might be an indication of the political will, or rather lack thereof, to commit to the Accord and make sure it is being implemented properly. Another threatening sign was the fact that the RC was hardly able to function due to non-disbursement of funds by the government.¹⁷⁶ Though RC plays a supervisory role over the three Hill District Councils, it is not any part of the local government system of Bangladesh or any bureaucratic network. Accusing the Chittagong Hill Tracts Regional Council Act 1998, as ‘sanctity of unitary state’ the High Court declared it unconstitutional on 13 April, 2010.¹⁷⁷ However the Appellate Division stayed in the verdict.

The Accord only stated that a ministry shall be established with appointing a tribal Minister without specifying the role, function and activities of the ministry. However, CHT Ministry shall be expected to speak on behalf on the new CHT institutions and to act as an effective body in influencing the national decision-making process regarding the CHT. Power and function of the Regional Council and CHT Ministry has not been yet clearly drawn, and many points overlap. This has created a very conflict ridden relation between the two institutions and the CHT Ministry head, who is a political appointee. The refusal or failure to appoint a CHT indigenous person as the cabinet level minister is a major bone of contention among JSS members, making many highly critical to implementation of the Accord.¹⁷⁸ Presently, the CHT Affairs Ministry is under the portfolio of the Prime Minister, and an indigenous person hold the post of State Minister.

One of the special bodies of interest for this study is the Land Dispute Resolution Commission, established to resolve disputes over ownership and user rights over lands within

¹⁷⁵ Roy, R. D 2002: 6

¹⁷⁶ CHT Commission 2000: 18

¹⁷⁷ Prothom Alo, April 14, 2010

¹⁷⁸ Roy, R. D 2004: 126

the CHT. It is headed by a retired judge of the High Court. Its members include the three Circle Chiefs, the Chairpersons of the RC and the HDCs (or their nominees) and the Commissioner or Additional Commissioner of the Chittagong Division (a senior civil servant). Since the formation in 1999, disputes about the working methods and contradictory provisions of 2001 Act have disrupted its work. The function of this Commission is necessary to curb ethnic violence, promote economic development of the area and bring what is called “communal harmony” in the CHT, not a small task since land dispute is the main problem in the CHT, playing a major role in the recently growing ethnic violence.

In the peace treaty, general amnesty to refugees was granted and a Task Force has been formed to rehabilitate tribal refugees and internal tribal evacuees. According to the Khagrachari DC Office 64,335 family have been rehabilitated until 2009.¹⁷⁹ In addition, there have been about 60,000 indigenous Internally Displaced People (IDPs) between 1992 and 1997. In 2004, Asian Indigenous and Tribal Peoples Network (AITPN) found that about 40 villages of returnee refugees are still under the occupation by the settlers and over 3,000 families did not get their land back. Almost 50 percent of returnees could not return to their own homesteads and native villages because they failed to get back their homesteads and lands.¹⁸⁰ But unfortunately the government has sought to redefine the definition the IDPs and trying to fit Bengali settlers in the definition.

Challenges for the CHT Land Dispute Resolution Commission

The CHT is an example of a legal and juridical pluralistic system. Very few custom-based land and natural resource rights formally recognized by written legislation. During the resettlement period (1979-1984) which I have discussed in chapter four, the District’s civil administration, promoted by the state military, issued land titles to the non-indigenous settlers, considering large tracts of the CHT lands as state-owned land. Through this contested land distribution process, settlers occupied title many lands of indigenous people.¹⁸¹ Indigenous people considered those lands, in which titles had been issued to non-indigenous settlers, belong to them according to customary law and the law of prescription. They have been

¹⁷⁹ DC, Khagrachari, January 19, 2010

¹⁸⁰ Chowdhury, Hasina Bushra 2002: 22

¹⁸¹ Roy, R. D 1997: 194. Indigenous people lost their paddy lands instead of fully documented title registered with District lands registers) in Panchhari, Dighinala, Matiranga and Manikchhari thanas of Khagrachari District and Kobakhali thanas of Rangamati District in the settlement period. And lost their friengeland (seasonally submerged paddy land) in the Langadu, Dighinala, Naniarchar and Barkal thanas.

occupying and using these lands uninterruptedly for many generations, which may be regarded in the legal terms be said to be ‘since time immemorial’.¹⁸²

Table 05: Customary Resource Rights of CHT Residents

Natural Resource	Right-Holder	Regulatory Law/Custom	Regulating Authority
Homestead Lands	Hillpeople	Rule 50, CHT Regulation	Headman
Swidden (Jum) Lands	Hillpeople	Rule 41, CHT Regulation	Headman, DC
Used Swidden Lands	Hillpeople	Traditional Customs	Headman
Forest Produce	Mauza Residents/ Hillpeople	Rule 41 A, CHT Regulation/ CHT Forest Transit Rule	Headman & Karbari
Grazing Lands	Mauza Residents	Rule 45B, CHT Regulation	Headman, DC
Grasslands	Mauza Residents	Rule 45, CHT Regulation	Headman, DC
Wild Game	Hillpeople/ State	Traditional Customs/ Various Acts	Headman, Circle Chiefs/ Forest Department
Marine Resources	Mauza Residents	Undefined	Headman
Large Water Bodies	Mauza Residents/State	Undefined	DC
Smaller Aquifers	Mauza Residents	Undefined	Headman

Source: Roy, Raja Devasish 2002: 21

¹⁸² Roy, R. D 2004: 152. The principle of a people living within a territory since “time immemorial” has been explained thus in the context of the Indigenous Peoples Rights Act of 1997 of the Philippines or “Republic Act No. 8371” {Section 3 (p)}: A period as far back as memory can go, certain indigenous peoples are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions”. According to the Swedish Code of Land Law, “It is immemorial right, when one has had some real estate or right for such a long time in undisputed possession and drawn benefit and utilized it that no one remember or can in truth know how his forefathers or he from whom the rights were acquired first came to get them.

The Accord acknowledged the recurrence and administrative roles of the Chiefs and Headman, who are authorized to provide permanent resident certificates for both the Hillpeople and non-Hillpeople.¹⁸³ CHT Regulation of 1900 also obliged the government to respect native customary ownership rights and to consult the chiefs and headman regarding their use and occupation. However, the government had not followed this, when they issued land titles to the many recent settlers. My interviews with five Bengali settlers uncovered that ‘the headman’ refused to take any ‘tax’ from them. Two of them complained about this to the Upazilla Nirbahi Officer (Chief Executive Officer of the Government at the Sub-District level), but got no response from this officer.¹⁸⁴ CHT Regulation wielded authority over lands and other natural resources to different traditional indigenous institutions (Karbaries, Headmen and Circle Chiefs) on the one hand, and state bureaucratic officials on the other. The above table (number five) pictures different authoritative role of indigenous institutions, local government bureaucrat and central administration often with suggestions and cooperation. As for example, the overall authority to control, regulate or prohibit swidden or jum cultivation granted the Deputy Commissioner.¹⁸⁵ In practice, especially in Bangladesh period, Karbari allocates land for jum cultivation and if Karbari fails to decide then Headman shall give the decision. In rare cases it reaches to the Deputy Commissioner.¹⁸⁶ As exemplified here, in CHT land ownership and management is characterized by a conflict-ridden “legal pluralism”, in which multiple and different normative systems of land rights compete with each other, resulting in high level of conflicts and tenure insecurity for many residents. Into this contested landscape, the CHT Land Dispute Resolution Commission Act 2001 comes in with a mandate stating that land disputes should be resolved, ‘in accordance with the laws, usage and practices of the region’. Considering Indigenous traditional laws and practices, how Land Dispute Resolution Commission would judge and deal the land dispute cases and establish Bengali settler land ownership right, is a question.

The post- Accord laws on one hand recognize the legislative competence of the District and Regional Councils over customary law, but also give certain authorities to the Land Dispute Resolution Commission. According to the 2001 Act, the Commission shall settle disputes involving those who returned from the neighbouring state of Tripura, India, under the so-called 20 Points Package agreement. A large number of indigenous people have also returned on 16 Point’s Package programme during the negotiation period of the previous Bangladesh

¹⁸³ Section 4 d of Kha, Peace Accord

¹⁸⁴ There are 64 Districts and 483 Upazilla in Bangladesh. I interviewed 20 indigenous and 15 Bengali settlers.

¹⁸⁵ Rule 41, CHT Regulation, 1900

¹⁸⁶ Discussion with two Headmen, Khagrachari. August 2010.

government and the Jumma Refugees Welfare Association. The Commission is not tasked to consider the rights of those who returned under the so-called 16 Point's Package.¹⁸⁷ Many of the indigenous people who returned under 16 Point's Package have not rehabilitated properly and many still living as Internally Displaced People (IDPs). The implication of this provision shall spell out a large number of indigenous people for seeking their land ownership right and get proper justice. As no one can complain against the Commission's verdict. A recent UNDP study (Baseline Survey 2009 of Chittagong Hill Tracts) found that an indigenous household on average had to change their permanent address for almost two times and around one in five were displaced more than once. About 10 percent of the CHT current households have out-migrated members who returned after the signing of the CHT Accord. Amnesty International has reported that there are about 60,000 Internally Displaced People (IDPs) living in CHT.¹⁸⁸ The Land Dispute Resolution Commission Chairman has argued for a cadastral survey claiming that survey will help the Commission to settle land disputes easily and speedily. But the Accord clearly stated that a cadastral survey is only possible after the finalization of the land ownership of tribal people by settlement of land disputes through proper verification, recording their title land and ensuring their land rights.¹⁸⁹ If the cadastral survey commences before finalising the ownership title, most of the indigenous people will fail to show proper land documentation and even any documentation, as they are using land for centuries with traditional rights. UNDP study found that only about one-third of the population of the CHT enjoy formal land ownership. In case of indigenous people, it is 30 percent and 42 percent for the Bengali.¹⁹⁰ These figures might be the effect of private land ownership title introduced by the British and the issued title to the Bengali settlers by Bangladesh government.

The most difficult cases before the Commission are current and will be in the future also, disputes involving Bengali settlers in possession of title deeds and indigenous people claiming their land rights, based upon customary ownership rather than backed by legal documents such as deeds and titles. I found during my field studies that here are also a small number of Bengali settlers, living in cluster villages (guchcha gram) who have titled deeds but do not possess any land. In the case of one respondent who came from such a community, he has filed a case against an indigenous person, whom he did not know. He did not even

¹⁸⁷ 70,000 refugees returned under 20 points package and 5,000 returned 16 points package in 1995.

¹⁸⁸ Internal Displaced Monitoring Centre, December 31, 2009. In their 27 June 1998 meeting, the Task Force decided to recognize only tribal IDPs.

¹⁸⁹ Section Gha-2, Peace Accord of 1997

¹⁹⁰ UNDP Baseline Survey 2009

know the location of the disputed land, to which he is claiming ownership. Such situation might be the consequence of handing over the land ownership title without following CHT land transfer rule. I uncover in the interview period that most case land ownership title hand over in the Chittagong City, where the settlers were gathered from the different District. They waited in the Chittagong City for land title deed and other administrative works before entering in CHT. In order to observe the Land Dispute Resolution Commission role in settling such dispute cases, we have to wait, since no settlements have been done so far.

In CHT, huge tracts of lands also have been leased for rubber plantations, horticulture and other forestry purposes in violation of the above mentioned law. To my observation, very few plantation programs have started since the lands were allocated to the lessees. It will be a major challenge for the Land Dispute Resolution Commission to cancel these leases (mostly in the hands of influential people) and to redistribute the recovered land among the many landless people of the three Hill Districts.¹⁹¹

Trust and Ownership Building

The challenges for countries in crises and post-conflict/war situations are complex, multifaceted and vary due to different historical root causes of conflict and the different political, social and geographical contexts.¹⁹² Legitimacy is based on several sources of authority of the state; due to political representation, political will to ensure transparency and accountability; economic reconstruction and service delivery structures which ensure basic rights to development and reconciliation, national and community security and border policing, etc. All these represent complex challenges for a state and a society recovering after a war or internal conflict situation. Trust building in a post-war situation in general and positively indicate about confidence in the post-war order and also be viewed about wider considerations around service delivery in public service sectors. And ownership may refer to how a population comes to regard certain policies ‘as their own’. Whether policies are designed through consultation with local actors to be responsive to local circumstances, culture, etc. are crucial for ownership building. Meeting such challenges, build trust over time and a sense of ownership to the key stakeholders and ad hoc institutions such as Truth Commission and Land Dispute Resolution Commission.

¹⁹¹ Most cases the leased were given high rank retired government and military officials and member of political parties even NGOs. A parliamentary body found that 45,000 acre Hills lands not used as per lease terms, and recommended cancellation of the leases. The Daily Star, July 21, 2009.

¹⁹² UN 2007: 3; Aziz, Monis 2011: 186

Bangladesh is still facing major challenges in implementing the Accord, a decade after it was signed. Actually, from the Accord was under negotiation, it has failed to building consensus among the mass Bengali citizens of Bangladesh. Before signing the Accord, its contents or provisions were kept secret to the political groups and the public at large, resulting in the absence of positive mobilisation of public opinion in favour of the Accord. The government ignored even the opposition's proposal for a round table discussion and for the public referendum. The parties opposing the Accord formed a united platform called the Parbotto Sorbodolyo Oikko Parishad (United platform of all Hill parties) in the CHT, and organized agitations in the Hill Districts. The BNP and its allies called for strikes and blockades on December 7, 1997 in Dhaka and on December 10 and 11, 1997 in the three Hill Districts. The BNP had given an ultimatum that the Accord was not canceled by December 21, 1997, it would launch into a fierce struggle.¹⁹³

The Accord was also refuted by a section of Pahari Chatra Parishad (PCP) (Hill Student's Forum), Pahari Gono Parishad (PGP) (Hillpeople's Council) and the Hill Women Federation. On December 3, 1997 the three organizations organized processions against the Accord in Dhaka, arguing the Accord has failed to safeguard the land rights of the Hillpeople, giving them actual autonomy and ensure the withdrawal of the Bengali settlers. A student leader of UPDF (formed by sections of PCP, PGP and Hill Women Federation) mentioned in a seminar that JSS was not in a strong bargaining position to negotiate about the contents or provisions of the accord and was ready to be a party of the accord.¹⁹⁴ Land Dispute Resolution Commission history itself a problem of trust gaining. Two Commission Chairmen have served since the formation of the Land Dispute Resolution Commission in June 3, 1999, without making any progress to settle the competitive land ownership claim. There was no Chairman in the two-year Caretaker Government period (2007-2008). The current Commission Chairman, who took over the office in July 19, 2009. As per my investigations, he started his work by a series of concrete initiatives to solve land disputes within the three-year period of time. This Chairman assured publically that land held under the customary law, would be considered on those terms when determining those disputes.

Subsidiary rules to supplement the CHT Land Dispute Resolution Commission 2001 Act have not been framed yet and still do not have exact terms of reference and the detailed nature of its functions. Indigenous leadership is boycotting the Commission meeting arguing

¹⁹³ Raj, Priscilla, Earth Touch, March 1998

¹⁹⁴ Roy, Raja Devasish 2008: 507

that 21 provisions of the 2001 Act should be amended, which are contradictory with the CHT Peace Accord of 1997.¹⁹⁵ I have collected evidence showing that without consulting with the Commission's members, including the Chairpersons of the Regional and Hill District Councils and the Circle Chiefs or Rajas, the Chairperson has decided the format of hearings, petitions, notices, etc.¹⁹⁶ The result is that the Commission again has become dysfunctional. During my investigations, 66 percent of the indigenous respondents said that they do not have any trust with the Commission. Arguing against certain decisions, especially the decision to have a Cadastral Survey and the ignoring of their leadership in the decision making process, are expressions of their critical stance towards the Commission. Though Commission has organized some discussion meeting at the District level, it has not taken initiative for awareness building for the residents of dispute land areas and even has not organized any view exchange meeting in the Upazilla level. My analysis of the interviews shows that none of the Bengali and Indigenous respondents are aware about the Commission working strategy, which laws it will make use of and about the procedural process. 80 percent Bengali and 25 percent Indigenous respondents express that they do not know about the Commission Members.

Another pressuring problem is the visible presence of government burucrate and military personnel in the meetings held by the Commission. The presence of these civil and military officers, give some strong signals to local Indigenous and non-indigenous population. 70 percent of my Indigenous respondents suspect that the Commission shall not be able to overcome the military influence. Even 40 percent of my Bengali respondents consider the Commission as part of the government apparatus. In my investigations, I discovered some irregularities in the Commission work. The office of the Khagrachari Commission is found accepting the application for land dispute settlement after the deadline, while the Rangamati Commission's office does not accept any applications after the deadline. My investigation did not cover the Bandarban Commission's office activities. The Khagrachari office has charged a fee of 200 Taka from each application for future communication purpose, like sending mail, calling for further information, etc. without giving any receipt.¹⁹⁷ However, the claimants who have appeared before the Rangamati office have not been charged for such purposes. The above issues highlight that absence of written terms and functions of the

¹⁹⁵ PCJSS

¹⁹⁶ Interview with Land Commission Member; New Age March 22, 2010

¹⁹⁷ In interview I found 9 respondents from Khagrachari (8 Bengali and 1 indigenous), who filed cases paid 200 Taka for each application.

Commission making its path more complicated and signaling that Indigenous people might be the victim of swindle and fraud and deprive again from justice.

Two Headmen have told that instead of using Post Office, the Commission sent official mail through the Thana (Local Police Station). They consider this practice as a harassment, granted the police repute as being biased in favour of the Bengali settlers. My query about overall satisfaction/dissatisfaction with the Commission's work, was met with responses that do not paint a black-and-white picture. In fact, 45 percent Indigenous respondents and 30 percent Bengali respondents state that they are not happy with the Commission work. Rest of the percentages divided into two; some percentage considered that it is too early to draw a line and others believe that current government will make the Commission effective.

Chapter Summary

The above discussions highlight that Bangladesh still has to go a long way to strengthen democracy, ensure rule of law and to protect human rights. A democratic culture is absent both in government and political parties level. Various laws and policies have been formulated to protect the minority rights, but rarely implemented. Many 'Investigations Committees' and 'Commissions' have submitted thousands of pages suggestions and recommendations. However, their suggestions and recommendations are rarely implemented. Formation of 'Commissions' and such type of bodies have become a fashion in Bangladeshi political culture. People will not judge me wrong, if I argue, people start to believe that they will never be benefited from such institutions, and they are doing nothing but 'paper work'. National Identity building issues, which I discussed in chapter four and political cultures in chapter five have divided Bangladesh society. It is fair to say 'trust', 'consensus' and 'ownership' building for any 'institution' or 'policy' shall be hard in Bangladesh. Participation of Indigenous leadership in policy making process is crucial for trust building from indigenous community. Proper integration of customary governance practices and structures will help to gain trust from Indigenous community and for that government has to amend the 2001 Land Dispute Resolution Act and formulate other policies to strengthen local government institutions in CHT. A large number of military presences and their involvement in civil affairs influenced negatively trust gaining issues. Dhaka and New Delhi need to cooperate on a common policy to prevent any future unraveling insurgency both in the CHT and in the northeast India. The present Awami League government promised in

their 2008 election manifesto that they will formulate laws and other policies to implement the Accord fully. A strong political motivation will help to reach on a consensus and will reduce the gap between the government and indigenous leaderships in policy formulation process.

Next chapter will focus on the national politics and political culture in Bangladesh and its' influence on trust and ownership building processes. Geopolitical issue and civil-military relations also discussed to analyse regarding this.

Chapter Six: Nature of State and Politics

This chapter will describe the hobbled democratic transition of Bangladesh from military to civilian rule and the ongoing struggle for representative democracy. This chapter highlights civil-military relations in the country and its influence on politics, civil and military administration and the role and operation of the military forces. How laws and policies have formulated to recognize and establish indigenous rights and the implications of such policies are discussed. The geopolitical issues of Bangladesh as a small state and CHT as a buffer region is debated in order to highlight its' influence on the nationalism and identity building issues.

Democracy, Political Parties and CHT

Though Bangladesh has been celebrated its forty years of independence, democratic and human rights base institutions remain quite weak. The cherished goal of democratic rights of the people was enshrined in the constitution in 1972, but in less than two years after the first parliament was elected, the structure and character of the fundamental law of the land were changed. In January 1975, through a 'constitutional coup' a presidential system of government replaced the parliament form. In June, all political parties were dissolved and were asked to join the newly formed national party, Bangladesh Krishak Shramik Awami League.¹⁹⁸ All newspapers were banned except four, to be retained by the state; the fundamental rights were suspended and made non-enforceable and the judiciary was reduced into a subservient agency of the executive branch of the state.¹⁹⁹ After the August 1975 bloody coup, General Zia, who often introduced himself as a 'soldier' not politician did not return to the barrack but introduced military participation in the so called democratization process in Bangladesh. This is common in the Third World countries; where military regimes normally highlights the failure of politicians to effectively manage the democratic system and pledge to restore representative government, but only in rare circumstances do military ruler transfer power to democratically-elected civilian governments.²⁰⁰ In December 1978, General Zia stressed: "I and my government believe in full democracy and are determined to restore the government of the elected representative of the people in due time",²⁰¹ In a similar tone, Ziaul Huq declared in Pakistan: "I want to make it absolutely clear that neither do I have any

¹⁹⁸ Islam, Syed Serajul 1984: 556

¹⁹⁹ Ahmed, Moudud 1995: 13

²⁰⁰ Zafarullah, Habib & Akhter, Muhammad Yeahia 2001: 74

²⁰¹ Islam, Syed Serajul 1984: 562

political ambitions.’’ He promised elections in 90 days, but took 90 months to fulfil this pledge.²⁰² In Bangladesh General Zia formed BNP to ‘‘fight’’ the electoral battle and obtained legitimacy for military rule and civilise his regimes. In Bangladesh, likewise, the scheduled elections were postponed several times.²⁰³ While only one military bureaucrat had been elected to the Parliament in 1973, 19 bureaucrats were elected in 1979; of the 19, 17 were retired military officers and two were civilian bureaucrats.²⁰⁴ Like General Ayub’s ‘Basic Democracies’, Zia introduced, Gram Parishad in 1976 and later renamed it Swanirvar Gram Sarkar in 1980, with the hope to mobilize support for the regime and also give the rural people a sense of participation. Though Zia had formed BNP to serve as his political base, he repealed the Political Parties Regulation Order of 1976²⁰⁵ and amended the constitution to give him almost unlimited powers. He rejected the opposition proposals that included a return to the parliamentary form of government and reinstatement of the secularism principle in the constitution. Rashed Khan Memon, the only Marxist-Leninist MP of that Parliament, described parliament as not ‘‘sovereign’’, calling it ‘‘a school-debating society with an indulgent president sometimes languidly watching from the gallery’’²⁰⁶

After the assassination of Zia on May 30, 1981, Chief of the Staff of the Army, General Ershad, who was praised for supporting the constitutional government and restoring order to the military after the failed coup, gradually revealed his covert intentions. He argued the case for a constitutionally mandated role for the military in national decision-making to prevent further military takeovers. Ershad, who took advantage of the deteriorating law and order situation, the internal strife in the ruling BNP and the President's irresolute personality, as well as the weakness of political institutions, to stage a coup in March 1982 and ultimately the suspension of the constitution, proclamation of martial law, dissolution of parliament, and a ban on political activities. Ershad held a referendum in 1985 and presidential and parliamentary elections in 1986 to legitimize his rule.²⁰⁷ Unlike Zia, Ershad also organized his own political party, ‘*the Jatiya (National) Party*’. The third parliamentary elections, held in April 1986 in an atmosphere of political mistrust and suspicion, evoked little enthusiasm among voters. Twenty eight political parties, mostly minor, took part including Awami League. However, BNP boycotted the election. The Awami League taken aback by the result

²⁰² Zafarullah, Habib & Akhter, Muhammad Yeahia 2001: 76

²⁰³ Ibid

²⁰⁴ Islam, Syed Serajul 1984: 565

²⁰⁵ According to this Order, political parties that wanted to take part in politics were required to submit their constitution and programs to the military government for approval.

²⁰⁶ Islam, Syed Serajul 1984: 568

²⁰⁷ Hakim, Muhammad A. 1998: 290

was trenchantly bitter and accused the regime of indulging in 'vote piracy'. Independent electoral observers from United Kingdom branded the elections a 'tragedy for democracy' and a 'cynically frustrated exercise'. Overseas journalists also reported massive vote rigging and other corrupt practices by supporters of the regime. The civil bureaucracy, including the police, was accused of manipulating election results to the advantage of Ershad's party.²⁰⁸ However, Ershad has to resign from the Presidency in 1990.

Bangladesh entered a phase of into parliamentary democracy through a general election in 1991. Democracy as an institution is new and still in 'the making' in Bangladesh. The ruling parties generally have tended to undermine the Parliament. The opposition parties have been using the strategy of 'boycotting the sessions' to put any sitting government under pressure. Desertion of Parliament on the part of opposition parties has been observed as a dominant phenomenon in Bangladesh politics during the last three Parliaments. The opposition deserted in the Fifth Parliament 300 (75 per cent) out of a total of 400 days; in the Seventh Parliament 156 (40.83 per cent) out of a total of 382 days, and in the Eighth Parliament 223 (59.78 per cent) out of a total 373 days at work. During the three Parliaments, the opposition remained absent from 58.78 per cent of the sessions.²⁰⁹ The Opposition was engaged in prolonged violent street agitation, causing considerable damage to the country's economy and its political system. Even the running Parliament is facing the same. Opposition boycotted Parliament for a long time. Parliamentary discussions have not only lost their contents and essence, inappropriate language, unparliamentarily appellation and intemperate exchanges dominate parliamentary deliberations. Prolonged and periodic walkouts by opposition even on unnecessary grounds characterize the very vulnerability and low level of credibility of deliberations in parliamentary sessions.

From the above paragraphs we can say that from its birth, Bangladesh has suffered numerical challenges to establish democracy and its' institutionalization process. Political parties whoever came in power pursue policies to weaken the democratic institutions instead of strengthening them. In the following paragraphs, I will discuss the policies, which government has initiated to establish indigenous rights and bring peace in the CHT region. Whether democracy played a constructive role for such a policy making process is under discussion.

²⁰⁸ Zafarullah, Habib & Akhter, Muhammad Yeahia 2001: 83

²⁰⁹ Moniruzzaman, M. 2009: 106

In the 6th Parliament (June 1996-June 2001) there were three elected MPs and one woman nominated MPs from the indigenous groups, all from the CHT. In the 8th Parliament only one indigenous MP was elected from CHT. Again in the 9th Parliament, three MPs were elected from CHT indigenous groups and one nominated woman MP from CHT.²¹⁰ During the Ziaur Rahman period, a tribal convention has been called and held four rounds of talks with the PCJSS during July 1977 and December 1978 with the objective of preparing a ground for political dialogue. The effort failed due to lack of trust between and within the parties.²¹¹ Zia established Chittagong Hill Tracts Development Board, but the indigenous leadership did not respond positively to the Board. Zia's attempts could be seen as more of a bureaucratic-military approach. There was hardly any role for the elected Members of Parliament.²¹²

Same happened during the Ershad period. The peace negotiation actors on the government side were senior military and intelligence officers. During the democratic regime of Khaleda Zia (1991-1996), multi-party Parliamentary Committee was formed led by Communication Minister, Oli Ahmed. He was tasked to find out the solutions to "the problems" of CHT through the democratic and peaceful processes of dialogue and participation of all concerned. A sub-committee was also formed led by Rashed Khan Menon. Though the two committees meet several times with the PCJSS, government did not disclose the content of the dialogues. There was no feed back to the parliament.²¹³ The Awami League, which came power in 1996, reopened the negotiations. Building on its election promises of initiate a political solution to bring peace in the CHT, a twelve-member national committee on CHT Affairs was formed, incorporating two MPs drawn from BNP and JP. However, the MP from BNP never participated in the national committee. With a series of meeting with the PCJSS and national committee, the Peace Accord signed on December 2, 1997. There was no third party in the negotiation process. Even the leading members of the parliament from the treasury and the opposition bench had hardly any clue about the negotiation process and content.²¹⁴ The Ministry of Chittagong Hill Tracts introduced four bills into the parliament in April 1998. BNP objected to the four bills and sponsored some 4,000 amendments to the proposals. The discussion on the bills continued only for 2/3 days. Without further scrutiny of the Committee of the bills were passed. The Speaker of the Parliament refused to discuss the amendments. BNP walkout and Jatiya Party lawmaker vote against the Regional Council Bill,

²¹⁰ Bangladesh Election Commission

²¹¹ UNDP 2005:9

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid

which was passed on May 6, 1998.²¹⁵ Even the government did not involve the field level administrations in the process, who are ultimately vested with the responsibility of implementing the torsion task. On the other hand, the leaders of the PCJSS took the overall responsibility of tribal welfare on their shoulder and signed the treaty without any consultation with other parties or groups in the CHT, who were also fighting for their rights. The characteristics of this policy seem to fit with the characteristics of the elite model where the reflection of people's choice in policy is missing. During the last month of parliament Awami League government passed the controversial CHT Land Dispute Resolution Commission Act 2001, without consultation with the PCJSS.²¹⁶ Since the formation of the District Councils on January 25, 1998, elections have not been held to date, which in turn are supposed to elect Regional Council. Both the government appointed their own man as chairman in the Districts Council, despite protests by the PCJSS. Even in this current Parliament, opposition leader Khaleda Zia, on March 15, 2011 narrated Santu Larma as a 'murderer' and 'terrorist'.²¹⁷ Government finds itself between "the horns" of a dilemma, if the treaty is implemented in its original form, including a few unwritten agreements, BNP and JI might intensify their mass movements against it. On the other hand, if the government brings some changes in the treaty provisions, as alleged by Santu Larma, to satisfy the opposition, there might be a renewed wave of tribal insurgency.²¹⁸ In addition to Bengali settlers, two tribal groups, namely Hill Women Association and particularly Hill Student Council, have been employing considerable pressure through hartals, and terror tactics such as torture and kidnaping of selected tribal supporters of the Accord.

Since the independence of Bangladesh, the demand for constitutional recognition of the identity of the Jumma people has been rejected by the government. In the year 1985, at the working group's fourth session, Bangladesh countered that 'indigenous' refers only to "those countries where racially distinct people coming from overseas established colonies and subjugated the indigenous populations." The entire population of Bangladesh was autochthonous, by comparison, and all had 'coexisted' prior to the formation of ethnic divisions by British administrators.²¹⁹ On 13th September 2007, when the General Assembly of the United Nations adopted the Declaration on the Rights on Indigenous Peoples,

²¹⁵ Rashiduzzaman, M 1998: 655

²¹⁶ PCJSS. According to the CHT Peace Accord of 1997, government shall do in consultation with and according to the recommendation of the Regional Council. Section (Ga) 13, CHT Accord.

²¹⁷ The Daily Star, March 18, 2011

²¹⁸ Ittefaq 1998, 2000

²¹⁹ Barsh, Russel Lawrence 1986: 375

Bangladesh governments abstained from the voting.²²⁰ In the current constitutional amendment process, indigenous people of Bangladesh are strongly raising their voice to recognize them constitutionally as 'adivasi' instead of 'small ethnic group'. Civil Society members, intellectuals and many political parties supported their demand and requested the government for constitutional recognition, but the government has not declared its official position yet. The above points show that in the policy formulation process democracy has played a very limited role. Policies have been formulated with elite model.

Civil-Military Relations in Bangladesh and CHT

The occurrence of military interventions in the political life of a country has not been a feature of this century. Although the earlier analysts tended to look at the military institution as "an alien and demonic" political group incapable of interacting with other social groups but able to act against them, it was only after the end of the Second World War that the political scientists started to develop a different point of view towards it.²²¹ Hence, whereas Machiavelli would argue that a "military man cannot be a good man", Voltaire would describe them as the "manifestation of brute force in rationalized form", and Samuel Adams would claim that a standing army, however necessary it may be, is always dangerous to the liberties of the people.²²² Several post-war political scientists began thinking of the military as a legitimate pressure group, capable of playing a positive role in the socio-political transformation of the newly created peripheral states. A number of them appeared to agree with Finer's assumption that "in all countries ruled by civilians, the armed forces...are in no better, but certainly no worse a moral position than any [other] departments of civil administration...to persuade the government to their point of view".²²³

Military interventions in politics in the Third World countries are part of a pattern where political and party institutions are weak and so is the democratic culture. Poor governance by civilian leaders, fractious political parties concerned more with their narrow and sectarian rather than broad-national interests, rampant corruption in public life and a stagnant economy add up to the factors paving the way for the army to step into politics, through either direct or indirect ways.²²⁴ Army started to take part in Bangladesh politics during the Liberation War

²²⁰ Office of the United Nations High Commission for Human Rights

²²¹ Karabelias, Dr. Gerassimos 1998:6

²²² Ibid

²²³ Ibid

²²⁴ Ghosal, Baladas 2009: 68

of 1971. That time army closely worked with the civil political leadership. After the Independence, army was used as an aid-to-civil power for several months to quell Marxist-Leninist groups that created a reign of terror in the Districts of Pabna and Rajshahi.²²⁵ Drastics cut in the defense budget and the formation of a preferential treatment for the Jatiya Rakhi Bahini (National Security Force) alarmed the military about its gloomy future. Demotions, dismissals and forced retirements of some officers because of personal conflicts with the AL leaders contributed enormously to the disenchantment of the military. By 1975, 'anyone talking to the jawans [soldiers] and officers could easily feel that, given resolute leadership, the army was prepared any moment to topple the Mujib government.'²²⁶ A dozen mid-level officers, mostly Majors did coup on 15 August 1975 and killed Mujib and all his family members, except two daughters and overthrew the elected government and its administration. The officers announced that the coup was a historic necessity, staged to bring the end of an era of tyranny. August's coup was followed by another coup led by Brigadier Khaled Musharraf, some consider him as pro-Mujib, on 3 November 1975. After 3 days a counter coup happened on November 7, in which Major General Ziaur Rahman²²⁷ emerged as the strongman of Bangladesh politics. At the end of 1975, proved beyond any doubt that Militray as an institution was highly polarised, politicised and fractionlized as pro-Indians vs anti-Indians, socialists vs anti-socialists, freedom fighters vs repatriate from Pakistan.²²⁸ In September 1975, Zia passed the Indemnity Ordinance absolved the assassins of Mujib and prominent AL leaders. Most of the rebellious officers responsible for the August 1975 coup were rewarded with lucrative appointments in Bangladesh missions abroad. From 1972 to 1981 military expenditure rose by approximately 186 percent. Despite having no background on civilian administration, military officers were posted into strategic decision making positions in the government secretariat, state-run corporations, police administrations and diplomatic missions abroad. 6 of 20 First Secretaries were ex-police officers, 14 of 20 Superintendents of Police were ex-army majors and captains and 10 of the 20 heads of the

²²⁵ Hakim, Muhammad A. 1998: 287

²²⁶ Ibid 1998: 286 cited from Talukder Maniruzzaman (1976). 'Bangladesh in 1975: the fall of the Mujib regime and its aftermath' in *Asian Survey*, Volume 16, Number 2.

²²⁷ Islam, Syed Serajul 1984: 557 Ziaur Rahman, a Major in the East Bengal Regiment, made the announcement of the independence of Bangladesh over Radio Chittagong on March 27, 1971. During the liberation war, Zia formed the 'Z' forces. After independence he expected to be the Army Chief of Staff, but Mujib appointed Major General K. Shafiullah, junior to Zia to the position. The main reason for by-passing Zia, Marcus Franda points out that on March 27, 1971, Zia declared himself the President of Bangladesh over Radio Chittagong. Mujib did not like Zia's ambitious nature. After the August 1975 coup, Shafiullah was removed from office and Zia was made the Army Chief of Staff. See Marcus F. Franda, 'the Bangladesh Coup', *American Universities Field Staff Reports, South Asia Series XIX*, No 15 (1975), p. 8.

²²⁸ Hakim, Muhammad A. 1998: 287

top public corporations were ex-military officers.²²⁹ A number of observers have linked Zia's regime to that of Suharto's Indonesia, where military and ex-military officers are in responsible of strategic, bureaucratic and economic positions in an ostensibly non-military regime, and where corruption has become institutionalized.²³⁰ After the assassination of Zia on May 30, 1981, the army again overthrew the elected BNP government in a bloodless coup on 24 March 1982 led by Army Chief Lt. General Hussain Mohammad Ershad. On November 28, 1981, as the Chief of Army Staff, Ershad declared that the only way to ensure stability and democracy in Bangladesh was to give a proper role to the military in our society. In one interview with New York Times, he mentioned:

Insha'Allah there will be no more coups, but what you have to do, is to find constitutional solutions so that no coup and no killing occur after one year, ten years or ever again...Our army is an efficient body, well disciplined and most honest, it is made of organized forces which are devoted to the nation. The potential of such an exceptional force can be genuinely used for productive and nation-building purposes, in addition to its role in national defence.²³¹

On July 12, 1987 Ershad tried to include military representative in local councils with the Local Government (Zilla Parishad) Amendment Bill, dominated by Jatiya Party lawmaker in Parliament. Ershad pushed the militarization of administration initiated by Zia a further step. In 1987, about 1500 militaries were appointed in civilian administration and one particular moment 53 out of 64 Districts Superintendent were military officers.²³² After much agitation by three main political parties, on 6 December 1990, Ershad resigned and handed over power to Chief Justice Shahabuddin Ahmed, in Bangladesh's first transfer of power through non-military means. In May 1996, President Abdur Rahman Biswas (elected by the BNP dominated fifth parliament) sacked and interned Bangladesh Army Chief Lt. General Abu Saleh Mohammad Nasim and some of his top military colleagues, allegedly for conspiring to topple the government. This sacking was the first time history in post-colonial South Asia by a civilian authority. The sacked officers claimed that the President intended to rig the seventh parliament elections, scheduled for 12 June 1996, in favour of BNP by using the army. Whether the alleged coup conspiracy was real or imagined; the army demonstrated its acceptance of civilian supremacy by not challenging any stern action of civilian president. This could be argued by the changing nature of world politics and the democratization flow with the fall of Berlin Wall. President Clinton pointed out in his speech at Georgetown University in 1991, countries with democratic governments are more likely to be reliable

²²⁹ Franda, Marcus 1981: 367

²³⁰ Ibid

²³¹ Interview released in The Bangladesh Observer (Dhaka), 29th November 1981.

²³² Hakim, Muhammad A. 1998: 289-290

partners in trade and diplomacy and less likely a threat to peace than those with other forms of government.²³³ In November 1996, Parliament passed the Indemnity (Repeal) Act and the Mujib assassination case reopened. In November 1998, Dhaka court ordered execution of 15 of those scented for killing of Mujib and his family members. They were hanged in January 2010. However, the trial has not created any adverse repercussions in the military institutions.

On 11 January 2007, while a consensus between the AL and the BNP could not be reached to hold credible polls, President Iajuddin canceled the election, imposed a state of emergency and stepped down as Chief Advisor of the Caretaker Government in favour of Fakhruddin Ahmed, a retired bureaucrat backed by the army. The army came again in ‘‘the driver’s seat’’, in negotiating the political process behind the so-called caretaker government. A National Coordination Committee against Crime and Corruption created headed by the 9th Infantry Division’s General Officers Commanding (GOC), Major-General Masud Uddin Chowdhury, which drafts in all seven GOCs as members. Army attempts to implement the minus-two formula, reminiscent of the Pakistani experiment of eliminating the late Benzir Bhutto and Nawaz Sharif and arrested Sheikh Hasina on 16th July 2007 and Khaleda Zia on 3rd September, in addition to several members of Khaleda Zia’s family and a number of top political leaders both from AL and BNP. Chief of Army Staff, Lt. General Moeen U Ahmed did not hesitate to take a public stance on national issues and policies. On April 2007 while articulating his views on the future political scenario in Bangladesh. He said categorically: ‘‘we do not want to go back to an ‘elective democracy’ where corruption in society becomes all-pervasive, governance suffers in terms of insecurity and violation of rights, and where political criminalisation threatens the very survival and integrity of the state’’.²³⁴ For a more enhanced role in politics and administration, army wanted to set up the National Security Council, where they would have been given a decisive role in taking major decisions concerning security matters, both military and non-military.²³⁵ However, the idea has not concluded in any form. Another major challenge came out for the democratic elected government when the BDR mutiny took place in 25-26 February 2009 in Dhaka, killing more than 70 officers from Bangladesh Army, No doubt, the army and its officers were greatly hurt by the brutal killings of their fellow army men, but under the enlightened leadership of

²³³ Karabelias, Dr. Gerassimos 1998:9

³⁵ Ghosal, Baladas 2009: 75

³⁶ Ibid

General Moeen U Ahmed, army refused to cross the limit. Though in a audio made available to public the army officers were heard talking angrily with Shaikh Hasina, the army decided to abide by the decisions taken by the civilian government. In fact, in a never before example, the army chief General Moeen publicly stated that the army of Bangladesh was subservient to the civilian government.²³⁶ This was major departure from the past. This statement of Moeen gave “a shot in the arm” to the fledgling democracy in Bangladesh.

Civil-Military relations in CHT mainly started during the insurgency period of the mid 70s, when the 24 Infantry Division of Bangladesh Army was entrusted responsibility to combat the armed struggle of the *Santi Bahini*. With the ‘Operation Dabanol’ (Operation Wild-fire), the whole CHT administration went under the authority of the military. From development facilities, to tribal affairs and forest resource management all came under direct control when GOC of 24 Infantry Division of Bangladesh Army was appointed as Chairman of Chittagong Hill Tracts Development Board in 1982. That Board was established in 1976 with the aim for economic development of the CHT, based on a counter terrorism concerns. However, from 1996-2006, one indigenous MP and one Bengali MP from CHT served as the Chairman of the CHTDB.²³⁷ GOC was appointed Chairman again in the last Caretaker Government (2007-2009) period. The current Chairman is an indigenous MP. From 2001, army started the ‘Operation Uttoron’ (Operation Upliftment) programme which has interfered with the civil administrative institutions. During my field research, both my Bengali and indigenous respondents have shared similar views about the army influence on civil administration. Bengali respondents stated that they tend to seek help from the army instead of civil administration in crisis.

The above discussion highlights that military has played a dominating role in the politics of Bangladesh. Like a quite many third world countries, the military has intervened in the democratic process. Political parties can also be blamed for not playing a constructive role in institutionalizing the democratic process. In the following paragraph, I will discuss about the development of foreign policy of Bangladesh towards India and in particular how religion and nationalism have influenced Bangladeshis policy formulation process towards its giant neighbour, and the consequences which have followed.

²³⁶ The New Age 2009

²³⁷ Even during the first democratic Khaleda Zia government (1991-1996) GOC continued as Chairman of the CHTDB. AL government (1996-2001) appointed an indigenous person. BNP-Jamat coalition government (2001-2006) appointed a Bengali person as Chairman, violating the CHT Accord.

The Relationship with India

History is the first and leading determinant of the foreign policy of Bangladesh towards India. Though some scholars, particularly Indian scholars believe that Indo-Bangladesh relations formalised with Bangladesh independence in 1971, Bangladeshis see the relationship from a different vantage point. The struggle for a separate Bengali identity, started in the mid-1930s not only distinct from Hindu majority of the province, but also from their co-believers of the other regions of India. In the 1940 Lahore Resolution of the All-India Muslim League, A. K. Fazlul Haq called for more than one state for the Muslims of India, thereby seeking rights and interests for the Bengali Muslims in Bengal. Though Bengali Muslim enthusiastically supported the cause of Pakistan in 1947, when Mohammad Ali Jinnah declared 'Urdu' as a state language in January 1948, the language movement started and Bengali nationalism was revived with the February 21, 1952 as a formative date.²³⁸ After Independence, returning from Pakistan, Mujib in his speech at Kolkata on February 16, 1972 stated: 'I have no doubt that India, our next door neighbour will proudly march on as the largest democracy, with secularism and socialism at home and non-alignment in international relations.' The Awami League government officially announced that 'friendship with India is a cornerstone of the foreign policy of Bangladesh.' On March 19, 1972, Bangladesh signed the 25-year Treaty of Friendship, Cooperation and Peace with India.

An anti-India sentiment grew in the military when Indian Army did not hand over all the sophisticated weapons and vehicles captured from the Pakistan Army to the poorly equipped Bangladesh armed forces and took away to India.²³⁹ The formation of *Jatiya Rakhi Bahini*²⁴⁰ (National Security Force) by Mujib with advise and support from India extended the sentiments another step. After independence, when India stopped its aid owing to her own economic position, anti-Indian feelings became strong and an important determinant of the foreign policy towards India. In June 1973, when an Indian trade delegation visited Dacca, Maulana Bhasani called hartal and went on a fast, demanding an end of the 25 year Friendship Treaty. After the assassination of Mujib on August 15, 1975, and the successive military rule, foreign policy of Bangladesh began to be viewed as anti-Indian, anti-Soviet and pro-US, pro-West and pro-Pakistan or pro-Islamic. Ziaur Rahman tried to internationalise

²³⁸ Bhardwaj, Sanjay 2003: 266

²³⁹ Talukder, Maniruzzaman 1976: 122

²⁴⁰ A para-militia unit of 25,000 men, mainly devoted and loyal to the AL. Some argue that Mujib created this countervailing force to the regular army with a view to confront and eliminate the growing opposition to the government.

Ganga Water dispute and took the Farakka issue to the OIC Foreign Ministers' Conference in Istanbul in May 1976, in the Colombo Summit of the non-aligned countries in August 1976 and in the 31st Session of the UN General Assembly in November 1976.²⁴¹ India's river-flow blockade attempts, position on the so-called maritime belt issue, unilateral seizure of two newly raised islands in the Bay of Bengal, establishment of camps on Bangladesh territory, talk of pushing 'outsiders' from India's northeastern regions into Bangladesh and failure to implement the 1974 border agreements, all contributed to serious strains on the Dacca-New Delhi relations.²⁴²

When Indira Gandhi assumed power after the January 1980 election, Zia went to New Delhi along with the proposal to sell gas to India. However, the relationship has not developed in a satisfactory level. After the assassination of Zia in 1981, General H. M. Ershad followed Zia's anti-India and anti-Soviet plank. The 'India locked' position of Bangladesh makes the Bangladeshis feel India can dominate and easily alter the political situation of Bangladesh. During the conflict between the military and *Santi Bahini* in CHT, a large number of CHT indigenous people, mainly Chakma fled to Tripura, India. Bangladesh government accused India to encourage the *Santi Bahini* and giving them military and strategic support. Much like other states in South Asia, Bangladesh also started resenting India's overwhelming regional presence. India eventually became one of the central issues around which domestic politics in Bangladesh revolved. Opposing India became the most effective way of burnishing one's nationalist credentials in Bangladesh, and political parties (with the possible exception of the Awami League), made full use of this political tactic. During the 1991 democratic election, BNP used the anti-India stand as a major election plank. During 1991 Khaleda government there were three prime ministerial, six ministerial, eight secretaries-level and a number of Joint River Commission meeting took place, however both sides could not reach any acceptable solution on the Farakka issue.²⁴³ In April 1992, BJP led India passed a resolution claiming that over 15 million Bangladeshis had illegally entered India. This illegal immigration issue and Babri Mosque demolition in India and the riots that followed in Bangladesh, adversely impact the relationship. However India handed over the *Tin Bigha*²⁴⁴

²⁴¹ Bhardwaj, Sanjay 2003: 272

²⁴² Haque, Azizul 1980: 201

²⁴³ Hossain, Ishtiaq 1998: 139

²⁴⁴ The Tin or Teen Bigha Corridor ('Tin' is three in Bengali and 'Bigha' is a unit of area roughly 1500 to 6771 square meters) is a land bridge that connects the Bangladeshi chhitmahal (enclave) of Angarpota/Dahagram (AGDH) with mainland Bangladesh.

Corridor on a lease and opened it for use by Bangladeshi passengers and vehicular traffic on June 26, 1992.²⁴⁵

When Sheikh Hasina came to power in 1996, the relationship between two governments improved significantly. Number of agreements and treaties signed including the Ganga Water-Sharing Treaty on December 12, 1996, with strong opposition from the BNP and Jamaat-I-Islami.²⁴⁶ Both Bangladesh and Indian government reached an understanding of not supporting insurgencies in each other's territory. India decided to stop giving aid and support to the Santi Bahini. Without losing Indian base and support, Santi Bahini signed the historic, Chittagong Hill Tracts Peace Treaty on 2 December 1997, ending the decades old insurgency in the Chittagong Hill Tracts. Though Hasina agreed on a transshipment agreement on July 28, 1999 and it came into effect in January 2002, but it was discontinued after a while.²⁴⁷

The military confrontation between India's Border Security Force and Bangladesh Rifles between April 15 and 19, 2001 gave a critical twist to Indo-Bangladesh relations. One of the major election planks of the BNP/Jamaat-e-Islami coalition government (2001-2006) was the demand to renegotiate the Ganga Water Sharing Treaty. During the coalition government, the activities of terrorist and extremist groups increased manifold, culminating in the near simultaneous, close to 500 bomb blasts through out Bangladesh in August 2005. India accused Bangladesh for giving the logistics, training and infrastructure support to the insurgents group from North East India and also blamed that Pakistan's ISI was allowed to use Bangladesh as a conduit for many terrorist operations in India. When Sheikh Hasina came power for the second term after the December 2008 election, firmly stated that "Bangladesh will not allow its territory to be used for activities directed against any other country, combining to establish a regional South Asian Task Force to combat terrorism and militancy" Jamaat-e-Islami described the Task Force proposal together with any suggestion of providing transit facilities to India as 'anti-national' and going against the sovereignty of Bangladesh. Khaleda Zia has also threatened to launch a people's movement if any 'anti-national' proposal are considered.²⁴⁸ During Hasina's state visit to India from January 10-13, 2010, both the Prime Ministers agreed on a vision for the future in the pursuit of the common good- bilaterally, regionally and globally." The two prime ministers upheld the principle of

²⁴⁵ Bhardwaj, Sanjay 2003: 273

²⁴⁶ Late Mannan Bhuiyan, the then general Secretary described the treaty as 'unequal' and accused the government of accepting it under duress. Jatiya Party (Ershad) and JSD (Rob) support the treaty.

²⁴⁷ Ershad portrayed the agreement 'suicidal', the Workers Party called it one-sided accord beneficial to India. Khaleda, the leader of the Opposition warned that transshipment would be a direct threat to national sovereignty.

²⁴⁸ Sikri, Veena 2009: 155

democracy as the main basis of improving the relations between the two countries. Though not clearly stated, they held deficient democracy as a main factor for “the ups and downs” in the relationship of the two countries.

Chapter Summary

This above discussion points and issues highlight the democratic struggle of Bangladesh and how the democratic journey has been disrupted various times by the security force. The military has taken advantage of the absence of strong democratic institutions and influenced strongly politics and policy formulation process. The military has also played an influential role in the foreign policy making process towards India. Cultural nationalism and identity issues (in the military rule period), have influenced the policy formation process in Bangladesh for establishing indigenous rights. Institutionalization of democracy and its practice will help the political parties to reach on a consensus and find a common goal. This will also be helped from further military intervention in civic life. A mutual, cooperative and respective relationship with India has to be developed in CHT in order to bring peace in the region.

Chapter Seven: Conclusion and Recommendations

Conclusion

The accord sought to devolve into political and economic powers to the Hillpeople and thereby empower them by creating the new institutional body like Regional Council and strengthening the three Hill District Councils and Ministry of Chittagong Hill Tracts along with the traditional and administrative authorities who were running since the British colonial period. Though theoretically more layers of administration help for a better check and balance, but within the context the Bangladesh political and administrative system vis-à-vis the CHT, this has created more problems than solutions. In one hand, CHT Regulation District maintained the traditional institutions like the Circle Chiefs and Headman but executive, judiciary and financial power vested in the Deputy Commissioner. The power of Circle Chiefs is limited to the collection of taxes and the dispensation of justice in the traditional courts. Though the Chiefs are playing an advisory role to assist the Deputy Commissioner in the administration of their respective circles, the Deputy Commissioner is not obliged to take their advice or heed their decisions. The 1997 Accord empowered the Hill District Councils administratively to deal with land administration in CHT. According to the provisions of the Accord, ‘prior consent’ of the Hill District Council is necessary for ‘settlement, leases and transfer’ and ‘compulsory acquisitions’ of land in CHT regions. Authority and function of lower-tire land and revenue administration officials, such as ‘Assistant Commissioner (land), Kanungo, Chainman and Headman also have to be vested under Hill District Council. Although the aforesaid matters have been included within the Local Government Council (Amendment) Acts of 1998, the requisite authority has not yet been transferred to the councils. If the councils fully empowered then what role Deputy Commissioner will play in the District land administration and what will be the nature of relationship with other institutions is not yet known.

In CHT, two legal regimes of customary land law and formalized state laws on lands and forests are coexisted but not without tension since the formal annexation of CHT into British Bengal. Most of these rights have never been defined by law or ancillary administrative regulations or orders. According to the Peace Accord, CHT Land Dispute Resolution Commission will be obliged to carry out its functions by taking into account the “laws, customs and conventions prevailing in the CHT”²⁴⁹ Rule 50 and 41 A of the CHT

²⁴⁹ Clauses 5 and 6, Part D, 1997 Accord

Regulation and Forest Act of 1927 through CHT Forest Transit Rules 1973 directly acknowledged the right to 'occupy' homestead land in rural areas and the right to use timber, bamboo and other 'minor' forest produces for *bona fide* domestic purposes. Though the Commission has got its constitution but its exact terms of reference and detailed function are not yet formulated. Whether Commission will declare the Bengali settlers' title illegal, issued by the Government of Bangladesh, without following the proper land transfer system (see appendix IV) or the Commission will give emphasis on customary law when dealing land disputes, is not yet clear. If the commission is not going to declare the Bengali settler's title illegal then what will be the priority for dispute resolution, when conflicting claims based upon the registered title from the District land registries, titles based on the registers of the headman, ownership and user rights based upon informal leases granted by headman (for the Karnaphuli reservoir area lowlands known as fringe lands), rights based upon long user or prescription, and custom-based rights come up before the Commission.

According to 2001 Land Dispute Resolution Act, no appeals will be allowed against the decisions of the Commission. May be this provision included to provide justice in an expeditious manner. I found seventy percent of my respondents both from the indigenous and Bengali community feel that there should be a provision for appeal. In this case, Chakma Raja Devasish Roy, also a member of CHT Land Dispute Resolution Commission suggests the option of judicial review in the Supreme Court. This may act as a check and balance on the Commission's decision.

In present CHT, Bengali settlers are now fifty percent or more in number. Government had brought these Bengali settlers more than 30 years ago, with a hope for land title ownership and better future. If the commission declares Bengali settlers' title illegal then what will be the government policy to settle such a large number of people. Government has not yet discussed and develop any strategic plan to tackle such crisis so far I know.

Another problem is that, Bengali settlers will raise a political movement against such decisions, which easily attracted many local and national political parties and government could be in trouble. It is however a question whether or not the government is ready as well as willing to take such type of pressure on its shoulder.

The lack of democracy and absence of democratic values are one of the major causes for the non-implementation of the CHT Accord. The BNP led coalition government came into power

in 2001. They oppose the Accord from the very beginning. However, they did not terminate the Accord but did nothing to implement. During their tenure (2001-2006), the Accord Implementation Committee was inactive and serious human rights violation reports published by various national and international bodies. In many occasions, they tried to misguide Bangladeshi people, presenting CHT issues erroneously. The PCJSS, signing party of the Accord submitted 21 points demand to amend the Land Dispute Resolution Commission Act 2001. The present government assures many times that contradictory laws would be regulated to implement the Accord fully. However, no initiative has taken yet in the Parliament. Even in the current Parliament, Opposition Leader Khaleda Zia branded PCJSS President and Regional Council Chairman, Santu Larma as murderer and terrorist. Indigenous leaderships are in doubt that whether the present government will play an effective role to implement the Accord fully or what would be the future of the Accord if BNP forms government in future.

The role of military has been pointed as another influential issue and many identified as the main influential component in relation to the implementation of the Accord. It is difficult to predict whether Bangladeshi democracy and politics will be able to overcome the influence of military and what would be the future civil-military relation in Bangladesh-these are issues I think become crucial in terms of implementing the Accord.

The Accord failed to build trust among political parties at the national level as well as among the factional groups in CHT. Without local ownership, it is hard to imagine how reconstruction efforts will turn into local priorities, support local capacities and seize local opportunities. Full implementation of the Accord with addressing the issues and challenges can resolve the question of autonomy, which was the root cause of the conflict. The leadership of CHT has to develop a long term strategy to negotiate with the Government of Bangladesh to bring forth further devolution in the spirit of the CHT Accord of 1997. These include the transfer of land administration authority to the Hill District Councils, the just resolution of land disputes by the CHT Land Dispute Resolution Commission, and the rehabilitation of the internally displaced indigenous people. CHT leaderships need to develop a meaningful partnership not only with the progressive section of Bangladesh society but also with mainstream Bangladesh society.

Many small indigenous groups accused PCJSS dominated by the Chakma, and they have hardly any representative in the newly constructive local government system. More safeguards need to represent the views of the small indigenous groups. The Accord does not

provide any time frame for its implementation. A time bound, strategic framework can resolve the controversy and doubt over non-implementation of the Accord. Constitutional safeguard of the Accord and for its new self-government system is necessary as it suspects for potential unconstitutional arrangement. If the points or the provisions of the Accord implemented fully, this could be a model for the future conflict management tools, especially for ensuring indigenous rights.

Recommendations

Action should be taken to reach a political consensus in support of the Accord at the national and regional level. Darby and MacGinty suggest, *“to make sure that agreements are fully implemented and sustained, post-agreement political activity is required. The danger is that parties may wish to disregard or re-negotiate some provisions in an arrangement which they find unpalatable. Some peace accords attempt to anticipate such problems by building safeguards or penalties for non-compliance into the agreement. The bottom line, however, is a strong political will to implement as agreement”*.²⁵⁰

Gender dimension issues are totally absent in the Accord as well as the post-accord institutional arrangement. We should not forget the role of women in various conflict resolutions and peace-building process in the world. CHT women should give more access in the political decision making and other negotiation process, as many argue that ‘women are generally more peace loving’.

There was not third party involvement in the negotiation process as well as signing the Accord. Even the Accord does not provide for the creation of an independent neutral team to assess the progress of implementation. SAARC could be the best choice to play such a role in this regard.

UNDP Baseline survey of 2009 finds that only 7.8 percent of CHT people completed primary education, and 2.4 percent completed secondary education. About 54 percent of the household heads have reported having no education. Government should take measures to improve the education and education should focus on constructive and positive behaviour and help children and adults to understand their responsibilities for building a peaceful future. In my fieldwork period, I found both the Bengali, and indigenous community people bear

²⁵⁰ Roy, Raja Devasish 2000:259 coded from Darby, John and Roger, MacGinty

'enemy image' in their mind, though they live in the same community for more than thirty years. Peace education can help to reduce ethnic religious hatred by bringing members of conflicting groups together in a dialogue for searching a common understanding and can help to replace this enemy image.

UN, donor community and other international bodies can share their experiences for traditional conflict management, which have been used in many conflicts and can offer technical assistance as well as expertise.

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Full Text of the CHT Peace Accord 1997

English Translation as published by Daily Star Internet Edition Volume 1 Number 113
December 03, 1997

Keeping full and unswerved allegiance in Bangladesh's state sovereignty and territorial integrity in Bangladesh's Chittagong Hill Tracts region under the jurisdiction of the Constitution of the People's Republic of Bangladesh, the National Committee on Chittagong Hill Tracts, on behalf of the government of the People's Republic of Bangladesh, and Parbatya Chattagram Jana Sanghati Samiti, on behalf of the inhabitants of Chittagong Hill Tracts, reached the following agreement in four parts (namely: Ka, Kha, Ga, Gha) to uphold the political, social, cultural, educational and economic rights of all the people of Chittagong Hill Tracts region, to expedite socio-economic development process and to preserve respective the rights of all the citizens of Bangladesh and their development.

(Ka) General:

1. Both the sides recognised the need for protecting the characteristics and attaining overall development of the region considering Chittagong Hill Tracts as a tribal inhabited region.
2. Both the parties have decided to formulate, change, amend and incorporate concerned acts, regulations and practices as soon as possible in keeping with the consensus and responsibility expressed in different sections of the agreement.
3. An implementation committee will be formed to monitor the implementation process of the agreement with the following members:
 - Ka) A member nominated by the Prime Minister: Convenor
 - Kha) Chairman of the task force formed under the purview of the agreement: member
 - Ga) President of Parbatya Chattagram Jana Sanghati Samiti: member
4. The agreement will come into effect from the date of its signing and execution by both the sides. This agreement will be valid from the date of its effect until all the steps are executed as per the agreement.

(Kha) Chittagong Hill Tracts Local Government Council/Hill District Council:

Both the sides have reached agreement with regard to changing, amending, incorporating and writing off the existing Parbatya Zila Sthanio Sarkar Parishad Ain 1989 (Rangamati Parbatya Zila Sthanio Sarkar Parishad Ain 1989, Bandarban Parbatya Zila Sthanio Sarkar Parishad Ain 1989, Khagrachhari Parbatya Zila Sthanio Sarkar Parishad Ain 1989) and its different clauses before this agreement comes into force.

1. The word "tribal" used in different clauses of the Parishad Ain will stay.
2. The name "Parbatya Zila Sthanio Sarkar Parishad" will be amended and the name of parishad will be "Parbatya Zila Parishad."
3. "Non-tribal permanent residents" will mean those who are not a tribal but have legal lands and generally live in Hill Districts at specific addresses.

4. Ka) There will be 3 (three) seats for women in each of the Parbatya Zila Parishad. One third (1/3) of these seats will be for non-tribals.
Kha) 1, 2, 3 and 4 sub-clauses of clause 4 will remain in force as per the original act.
Ga) The words "deputy commissioner" and "deputy commissioner's" in the second line of sub-clause (5) of clause 4 will be replaced by "circle chief" and "circle chief's".
Gha) the following sub-clause will be incorporated in clause 4 "The concerned circle office will ascertain whether a person is non-tribal or not on the basis of submission of certificate given by concerned mouza headman/union parishad chairman/pourashabha chairman and no non-tribal person can become the non-tribal candidate without the certificate received from the circle officer regarding this."
5. In the clause 7 it has been stated that the chairman or any other elected member will have to take oath or give declaration before Chittagong Divisional Commissioner before taking over office. Amending this in place of "Chittagong Divisional Commissioner," the members will take oath or give declaration before "any High Court Division Judge."
6. The words "to Chittagong Divisional Commissioner" will be replaced by "as per election rules" in the fourth line of clause 8.
7. The words "three years" will be replace by "five years" in the second line of clause 10.
8. In clause number 14 there will be provision that a tribal member elected by other members of the Parishad will chair and discharge other responsibilities if the post of chairman falls vacant or in his absence.
9. The existing clause number 17 will be replaced by the following sentences: A person will be considered eligible to be enlisted in the voters list if he/she (1) is a Bangladeshi citizen (2) he/she is not below the 18 years (3) appropriate court has not declared him mentally sick (4) he/she is a permanent resident of Hill District.
10. In sub-clause 2 of clause number 20 the words "delimitations of constituencies" will be incorporated independently.
11. In sub-clause 2 of clause 25 there will be a provision that the chairman of all the meetings of the Parishad or a tribal member elected by other members of the Parishad will chair meetings and discharge other responsibilities if the post of chairman falls vacant or in his absence.
12. As the entire region of Khagrachhari District is not included in the Mong circle, the words "Khagrachhari Mong Chief" in clause number 26 of Khagrachhari Parbatya Zila Sthanio Sarkar Parishad Ain will be replaced by the words "Mong circle chief and Chakma circle chief." Similarly, there will be scope for the presence of Bomang chief in the meetings of Rangamati Parbatya Zila Parishad. In the same way, there will be provision that the Bomang circle chief can attend the meetings of Bandarban Parbatya Zila Parishad meetings if he wishes or invited to join.
13. In sub-clause (1) and sub-clause (2) of clause 31 there will be a provision that a chief executive officer of the status of a deputy secretary will be there as secretary in a Parishad and the tribal officials will get priority in this post.
14. Ka) In sub clause (1) of clause 32 there will be a provision that the Parishad will be able to create new posts for different classes of officers and employees for properly conducting the activities of the Parishad.
Kha) The sub-clause 2 of clause 32 will be amended as follows: The Parishad can, according to rules, recruit class three and four employees and can transfer, suspend, terminate or given any other punishment. But condition would be that in case of such appointments the tribal residents of the District will be given priority.
Ga) As per sub-clause (3) of clause 32, the government, in consultation with the Parishad, may appoint officers for the other posts and there will be legal provision to removed, suspend or terminate or penalise officers as per the government rules.

15. 'As per rules' will be mentioned in Sub-clause (3) of Rule 33.
16. In the third line of Sub-clause (1) of Rule 36, the words "or in any way devised by the government" will be deleted.
17. Ka) The principal clause of the 'fourth' of Sub-clause (One) of Clause 37 will be valid.
Kha) "As per rules "will be included in Sub-clause (2), Gha, of Rule 37.
18. Sub-clause (3) of clause 38, will be cancelled and sub-clause (4) will be amended in conformity with the following text, "a new budget can be prepared and approved, if needed, at any time, before the completion of the previous financial year."
19. Rules 42 will incorporate the following sub-clause: "The parishad, with the allocated money from the government, will receive, initiate or implement any development project in the transferred subjects and all national level development programmes will be implemented through the parishad by the concerned ministries/divisions/organisations."
20. The word "Parishad" will replace the word "government" in the second line of Sub-clause (2) of Rule 45.
21. Rules 50, 51, and 52 will be repealed and following clauses will be introduced:
"If needed, the government will give advice or regulatory directives for streamlining the Parishad activities with the objectives of the aforesaid rules."
"The government, if the government receives any hard evidence that any activity or proposed activity of the Parishad is violating the aforesaid rules or is inconsistent with it, will have the authority to ask for written information along with explanation. The government will also have the authority to give advice or directives in this regard."
22. "Within 90 days of abolition of the Parishad" shall be read in place of "after the expiry of defunct period" before the words "the act" under clause 53 sub-clause (3).
23. The word 'government' will be replaced by the word "ministry" in the third and fourth lines in clause 61.
24. (A) sub-clause (1) in clause 62 will be replaced by the following:
Whatever be the provisions in the currently prevailing laws, Hill Districts police sub-inspector and below shall be appointed by the Parishad as per the prescribed rules and the Parishad will transfer, and take action against them as per the prescribed rules.
However, the condition will be that tribals of the District will get preference in case of this appointment.
25. The words "supports will be provided" will remain in third line in clause 63.
26. Clause 64 will be amended as follows:
 - a) Whatever exists in the currently prevailing laws, without prior permission of the parishad, no lands, including leasable khas lands in the District, can be leased out, sold, purchased or transferred.
However, it will not be applicable in case of the reserved forest, Kaptai Hydroelectricity Project area, Betbunia Satellite Station area, state-owned industrial enterprises and lands recorded in the name of the government.
 - b) Whatever exists in the currently prevailing other laws, the government cannot acquire or transfer any lands, Hills and forests under the jurisdictions of the Hill District Parishad without prior discussion and approval of the Parishad.
 - Ga) The Parishad may supervise or control the work of headmen, chairman, amin, surveyors, kanungo and assistant commissioners (land).
 - Gha) The fringe land of Kaptai lake will be leased out on priority basis to their original owners.
27. Clause 65 will be amended to formulate the following: For the time being, whatever law is in force, the land development tax of the District will be in the hand of the Parishad and the tax to be collected on that account will be in the fund of the Parishad.

28. Clause 67 will be amended to formulate the following: Parishad and the government will raise specific proposals if it is necessary for the co-ordination of the Parishad and the government, and co-ordination of work will be done through mutual consultations.
29. Sub-clause (1) of Clause 68 will be amended to formulate the following sub-clause:
With a view to fulfilling the objectives of this law, the government will be able to prepare rules after discussion with the Parishad through gazette notification. Even after the formulation of any rule, the Parishad will have the right to appeal to the government for re-consideration of such rules.
30. Ka) In the first and second paragraphs of sub-clause (1) of Clause 69, the words "prior approval of the government" will be dropped and following part will be added after the words "should be done" in the third para:
It is conditional that if the government disagrees with any part of the provision formulated then the government will be able to provide suggestions or directives regarding the provision.
Kha) In the (Ja) of sub-clause (2) of Clause 69 the words "the power of the chairman will be given to any officers of the parishad" will be dropped.
31. Clause 70 will be deleted.
32. Clause 79 will be amended to formulate the following section:
The Parishad will be able to make written appeal to the government in case it feels that a law passed by the Jatiya Sangsad or any other authority is difficult for the District or objectionable for the tribals after stating the reasons of the difficulty or objection and the government may take appropriate steps for redressal as per the appeal.
33. Ka) The word supervision will be added after "discipline" in the schedule number one on the activities of the Parishad.
Kha) The activities of the Parishad mentioned in number three will be added with the following:
(1) Vocational education, (2) Primary education in mother tongue (3) Secondary education.
Ga) The words 'reserved' or will be dropped from the first schedule of the activities of Parishad and sub-clause 6 (Kha).
34. The following subjects will be included in the functions and responsibilities of the Hill District parishads:
(Ka) Land and land management, (Kha) Police (local), (Ga) Tribal law and social justice, (Gha) Youth welfare, (Uma) Environmental protection and development, (Cha) Local tourism, (Chha) improvement trust and other local government institutions, Barring paurashabha and union parishads, (Ja) Issue of licence to local industries and business, barring Kaptai water resources, proper use and irrigation of other rivers and canals and beels, (Jha) Preservation of statistics of birth and deaths, (Ta) Business transactions and (Tha) Jhum cultivation.
35. The following subjects and sources will be included for imposition of taxes, rate, toll and fees by the Parishad stated in the second schedule:
(Ka) Registration fee of manual vehicles, (Kha) Tax on buying and selling of commodities, (Ga) Holding tax on land and buildings, (Gha) Tax on domestic animals, (Uma) Fees of social judgement, (Cha) Holding tax on government and non-government industries, Chha) A portion of royalty on forest resources, (Ja) Supplementary tax on cinema, jatra and circus, (Jha) Partial royalty of contracts by government for search and exploration of mineral resources, (Neo) Tax on business, (Ta) Tax on Lottery, (Tha) Tax on catching fish.

(Ga) Hill Tracts Regional Parishad

1. A regional council will be formed combining the three Hill Districts local government parishad through amending some clause of three Hill Districts Local Government Parishad Act 1989 with a view to strengthening and making them effective.
2. Chairman of the parishad will be indirectly elected by the elected members of the parishad. The chairman will enjoy the status of a state minister and he must be a tribal.
3. The parishad will consist of 22 members, including its chairman. Two-thirds of the members will be elected from the tribals. Following is the structure of the parishad:
 - Chairman one, Member (tribal) male 12, Member (tribal) female 2, Member (non-tribal) 6, Member (non-tribal) female one.
 - Among the total male tribal members, five will be elected from the Chakma tribe, three from Marma, two from Tripura and one from Morang and Tangchongya
 - Two persons will be elected from every District from the non-tribal male members. In the case of tribal female members, one from the Chakma tribe and one from the other tribes will be elected.
4. Three seats will be reserved from women in the council of which one-third will be non-tribal.
5. The members of the council will be elected indirectly by the elected members of the three Hill District councils. Chairman of the three Hill Districts will be the ex-officio members of the council and they will have the voting right. The eligibility and non-eligibility of the candidates for the membership of the council will be similar to that of the members of the Hill District Council.
6. The tenure of the council will be five years. Budget preparation and its approval, dissolution of council, formulation of council's regulation, appointment of and control over officers and employees and matters related to concerned subject and procedures will be similar to the subjects and procedures given in favour of and applicable for the Hill District Council.
7. A principal executive officer equivalent to the Joint Secretary of the government will be appointed in the council and the tribal candidates will be given preference in the appointment of the post.
8. a) If the chairman's post of the council remains vacant, a chairman will be elected indirectly from the other tribal members of the council by the members of the three Hill District councils for an interim period.
b) If any post of the member of the council remains vacant for any reason, it will be filled by by-election.
9. a) All the development activities under the direction of three Hill District councils will be coordinated by the council, including overall supervision and co-ordination of the matters under the jurisdiction of the three Hill District council. The decision of the regional council will be considered final in case of any conflict or lack of co-ordination in discharging the duties vested upon the three Hill District council.
b) The council will coordinate and supervise the local councils, including the municipalities.
c) The regional council may coordinate and supervise the general administration, law and order and matters related to the development of the three Hill Districts.
d) The council may provide direction in the disaster management and relief programme, including co-ordination of the NGOs' activities.
e) Tribal rules and social justice will be under the jurisdiction of the regional council.
f) The council may provide licence for heavy industries.

10. Chittagong Hill Tracts Development Board will discharge the given duties under the general and overall supervision of the council. The government will give preference to the eligible tribal candidates in appointing the chairman of the development board.
11. If any contradiction is observed between the Chittagong Hill Tracts Administrative Rules of 1900 and other related laws, acts and ordinances and the Local Government Council Law of 1989, it will be settled as per the advice and the proposals of the regional council.
12. The government may form an interim regional council and give it the responsibilities of the council until and unless the regional council is formed on the basis of direct and indirect election.
13. The government may formulate any law regarding Chittagong Hill Tracts subject to discussion with the regional council and that will be done as per the advice of the council.
14. Fund of the council will be formed from the following sources:
 - a) Finance received from the District council fund.
 - b) Finance and profits from all the property which have been provided and directed by the council.
 - c) Loan and grants from the government and other authorities.
 - d) Grants provided by any institution or person.
 - e) Profit from the financial investment of the council.
 - f) Any of the finance received by the council.
 - g) Finance received from other sources of income provided to the council as per the direction of the government.

Gha) Rehabilitation, general amnesty and other issues:

Both sides have reached the following position and agreed to take programmes for restoring normal situation in Chittagong Hill Tracts area and to this end on the matters of rehabilitation, general amnesty and others related issues and activities.

1. An agreement was signed between the government and the tribal refugee leaders on March 9, 1997 at Agartala of Tripura state on bringing back the tribal refugees staying in the state of Tripura. Under this agreement, repatriation of tribal refugees began on March 28, 1997. This process will continue and the leaders of the PCJSS will extend all possible co-operation in this regard. The internal refugees of the three Hill Districts will be rehabilitated through their proper identification by a task force.
2. The land record and right of possession of the tribal people will be ascertained after finalisation of the ownership of land of the tribal people. And to achieve this end, the government will start land survey in Chittagong Hill Tracts and resolve all disputes relating to land through proper scrutiny and verification in consultation with the regional councils to be formed under this agreement. These steps will be taken soon after signing and implementation of this agreement between the government and the PCJSS and rehabilitation of the tribal refugees and internal tribal refugees.
3. The government will ensure leasing two acres of land in the respective locality subject to availability of land of the landless tribals or the tribals having less than two acres of land per family. However, groveland can be allotted in case of non-availability of necessary lands.
4. A commission (Land Dispute Resolution Commission) will be constituted under a retired judge for the disposal of all disputes relating to lands. Besides settlement of the land disputes of the rehabilitated tribal, this commission will have full power to annul all rights of ownership on land and Hills which have so far been given illegal

settlements or encroached illegally. No appeal can be made against the verdict of this commission and the decision of this commission will be treated as final. This will be implied in case of fringe land.

5. This commission will be constituted with the following members:
 - Ka) Retired judge:
 - Kha) Circle chief (concerned):
 - Ga) Chairman representative of the regional council
 - Gha) Divisional commissioner/additional commissioner
 - Uma) Chairman of the District council (concerned).
6. Ka) The tenure of the commission will be of three years. But the tenure can be extended in consultations with the regional council.
Kha) The commission will resolve disputes on the basis of existing laws, customs and systems of Chittagong Hill Tracts.
7. The loans, which were obtained by repatriated tribals from government agencies but could not properly utilised owing to conflicting situation, will be exempted with full interest.
8. Rubber plantation and allotment of other lands: The allotments of lands to non-tribals and non-residents for rubber cultivation and other purposes but not yet utilised the lands for the projects properly during the last ten years will be cancelled.
9. The government will allocate additional finance on priority basis for taking up maximum number of projects to develop Chittagong Hill Tracts. Projects will be implemented on priority basis for construction of infrastructure for the development of the region and the government will allocate necessary funds for this purpose. The government will encourage development of tourism for local and foreign tourists, taking into consideration the environmental aspect of the region.
10. Reservation of quota and allocation of scholarships: The government will continue the quota system for the tribals in case of government jobs and higher education till they reach at par with the people of other regions of the country. With this aim in view the government will provide more scholarships for tribal boys/girls in educational institutions. The government will provide necessary scholarships for taking education abroad and research pursuit.
11. The government and the elected representatives will be active to preserve the distinctiveness of the tribal culture and heritage. The government will provide due patronisation and assistance for expansion of tribal cultural activities at par with that of the mainstream of the national life.
12. The PCJSS will submit to the government within 45 days of signing of this agreement the full list of its armed members and description and accounts of all arms and weapons under its control and possession.
13. The government and the PCJSS will jointly decide the day, date and place for depositing arms by the PCJSS within 45 days of signing of this agreement. The government will ensure all kinds of security for the members of the listed members of the PCJSS and their families for coming back to normal life after declaring the day, date and place for depositing arms by the listed members of the PCJSS.
14. The government will declare amnesty for those members who will deposit arms and ammunition on the scheduled date. The government will withdraw cases lodged earlier against those persons.
15. The government will take legal action against those who will not deposit arms and ammunition within the stipulated time.
16. General amnesty will be given to all PCJSS members after they return to normal life and this amnesty will also be given to all the permanent residents who were connected with the PCJSS activities.

- Ka) Each family of the repatriated members of the PCJSS will be given Taka 50,000 in cash at a time for their rehabilitation.
- Kha) All cases, warrants of arrest, held against any armed member or general member of the PCJSS will be withdrawn and punishment given after trial in absentia will be exempted after surrender of arms and coming back to normal life as soon as possible. The members of the PCJSS, if they are in jail, will be released.
- Ga) Similarly, no cases will be filed or no punishment be given to any person for mere being the members of the PCJSS after surrendering arms and coming back to normal life.
- Gha) The loans obtained by the members of the PCJSS from any government banks or other agencies but could not be utilised owing to conflicting situation would be exempted with interest.
- Uma) Those members of the PCJSS who were employed in various government jobs would be absorbed in their respective posts and the eligible members of their family will be given jobs as per their qualifications. In such cases, the government principles regarding relaxation of age will be followed.
- Cha) Bank loans on soft term will be given to the members of the PCJSS for cottage industry and horticulture and other such self-employment generating activities.
- Chha) Educational facilities will be provided for the children of the PCJSS and the certificates obtained from foreign board and educational institutions will be considered as valid.
17. Ka) Immediately with signing and executing the agreement between the government and the PCJSS and with the members of the PCJSS coming to normal life, all temporary camps of army, ansar and village defence force in Chittagong Hill Tracts excepting Bangladesh Rifles (BDR) and permanent cantonments (three in three District headquarters and in Alikadam, Ruma and Dighinala) will be gradually brought back to the permanent places and a deadline for this will be fixed. The members of the armed forces can be deployed under due rules and procedures in case of deterioration of law and order situation and in times of natural calamities or like other parts of the country under the control of the civil administration. The regional council may request the appropriate authorities for such help and assistance in case of such a necessity and in due time.
- Kha) The lands to be abandoned by military or para-military camps and cantonments will be either returned to the original owners or to the Hill District councils.
18. The permanent residents of Chittagong Hill Tracts with priority to the tribals will be given appointment to all categories of officers and employees of all government, semi-government, parishad and autonomous bodies of Chittagong Hill Tracts. In case of absence of eligible persons among the permanent residents of Chittagong Hill Tracts for particular posts, the government may give appointment on lien or for a definite period to such posts.
19. A ministry on Chittagong Hill Tracts Affairs will be set up appointing one minister from the tribals. The following advisory committee will be constituted to assist this ministry:
- 1) The Minister in charge of Chittagong Hill Tracts Affairs,
 - 2) Chairman/representative, regional council,
 - 3) Chairman/representative, Rangamati Hill District Council,
 - 4) Chairman/representative, Khagrachhari Hill District Council,
 - 5) Chairman/representative, Bandarban Hill District Council,
 - 6) MP, Rangamati, 7) MP, Khagrachhari, 8) MP, Bandarban, 9) Chakma Raja (King), 10) Bomang Raja, 11) Mong Raja, and 12) Three non-tribal members to be nominated

by the government taking one permanent non-tribal resident from each three Hill Districts.

This agreement is prepared in Bangla and completed and signed in Dhaka on Agrahayan 18, 1404, December 2, 1997.

On behalf of the Government of the People's Republic of Bangladesh
Sd/illegible
(Abul Hasanat Abdullah)
Convenor,
National Committee on Chittagong Hill Tracts, Government of Bangladesh.

On behalf of the residents of Chittagong Hill Tracts
Sd/illegible
(Jyotirindra Bodhipriya Larma)
President,
Parbatya Chattagram Jana Sanghati Samiti.

Source:

1. Appendix 3, *Life is Not Ours – update 4, 2000*

**System of Land Grants in the CHT
(Rule 34, CHT Regulation, 1900)**

1. No settlement of Government khas land shall be made in the District of Chittagong Hill Tracts except to extent and in the manner specified below:-

- (a) (i) The quantity of cultivated flat land to be settled for plough cultivation with a single family of Hillmen or non-Hillmen resident shall be such as added to the quantity of such land already in its possession does not exceed 5 acres. In addition to the flat land for plough cultivation land for grove plantation not exceeding 5 acres may be settled with such family; but in a case where the performance of a lessee is found by the Deputy Commissioner to be highly satisfactory, a further quantity of land for grove plantation may be settled with such family so that the quantity of land for grove plantation already in his profession, does not exceed 10 acres. Settlement of land for plough cultivation or grove plantation under this sub-clause shall be free of salami.

(ii) A lease for plough cultivation and grove cultivation under sub-clause (I) shall be granted by the Deputy Commissioner;

Provided that lease of land only for plough cultivation may be granted to a cultivating Hillman by the Sub-Divisional Officer. An application of a Hillman for lease of plough land may be made to the headman who will forward it to the Sub-Division Officer with his recommendation.

(iii) The rent for plough land leased out under sub-clause (I) shall be assessed at the usual rate of raiyati rent by the authority who grants the lease:

Provided that when any land, which had not been cultivated before, is so leased out, no rent shall be payable for the first three years of the lease.

(iv) The grove land leased out under sub-clause (I) shall be rent-free for the first three years and shall be assessed to rent as third class land for the next three years followed by an assessment to be made by the Deputy Commissioner in accordance with the produce of the land.

Explanation- In this sub-rule, “grove land” means flat land and includes such foothill land as would not require terracing, full or modified, to be utilized solely for plantation of fruit trees and other trees.

- (b) (i) land for rubber plantation and other plantation on commercial basis may be settled with a person on long term lease basis by the Deputy Commissioner upto 25 acres and by the Commissioner upto 100 acres. Settlement of land exceeding 100 acres shall not be made with the prior sanction of the Government.

Salami for settlement of land under this clause shall be charged at 100 percent of market value, 10 percent of which shall be payable in the first year and the balance shall be payable at 5 percent in the 8th to the 17th year and 10 percent in the 18th to 21st year.

Provided that in the case of Hillmen and non-Hillmen residents salami for lease upto 25 acres shall be charged at 50 percent of market value, 5 percent of which shall be payable in the first year and the balance shall be payable at 2 and half percent in the 8th to 17th year and 5 percent in the 18th to 21st year.

(ii) Usual raiyati rate of rent shall be payable for the land settled under this clause from the date of execution of the lease deed.

(c) (i) Land upto 10 acres outside urban areas may be settled by the Deputy Commissioner with a deserving industrialist on long term lease basis for establishment of industrial plants. Salami for such settlement shall be charged at 100 percent of market value and shall be payable at the time of settlement. In the case of lessees who are Hillmen or non-Hillmen residents the salami shall be charged at 50 percent of market value.

(ii) Rent per acre of land settled under this clause shall be assessed at half percent of market value.

(d) (i) Land for residential purposes may be settled by the Deputy Commissioner with deserving persons on long term lease basis. In urban areas, salami from Hillmen and non-Hillmen residents for such land shall be charged at 50 percent of market value and shall be payable at the time of settlement. In the case of a lease granted to any person other than Hillmen or non-Hillmen residents salami for such land shall be charged at 100 percent of market value. No salami shall, however, be charged from Hillmen and non-Hillmen residents for settlement under this clause of land outside urban areas.

(ii) Rent per acre of land settled under this clause shall be assessed at one fourth percent of market value.

(iii) Land exceeding 30 acres in an urban area for residential purpose shall not be settled with any person without prior approval of the Government.

(e) The Deputy Commissioner may, in accordance with such plan as may be approved by the Government, settle with a person land in an urban area for commercial purpose. The salami for such land shall be changed-

(i) at 50 percent, of market value in the case of Hillmen and non-Hillmen residents; and

(ii) at 100 percent, of market value in the case of others.

Rent per acre of land settled under this clause shall be assessed at half percent, of market value.

(f) Market value for the purpose of the aforesaid clause shall be determined in such manner as may be specified by the Government from time to time.

- (g) All settlements of khas lands shall be concluded in the form of a lease deed prescribed or to be prescribed by the Government and shall be registered under rule 12. The rights and liabilities of the lessees shall be governed by such terms and conditions as may be set forth in the lessee deed.²⁵¹
- (2) The Provincial Government may, by notification in the official Gazette, exempt any area from the operation of sub-rule (1) for the purpose of reclamation of culturable waste lands in such area with a view to bringing them under cultivation and when any area has been so exempted, lands in the area shall notwithstanding anything contained elsewhere in these rules, be dealt with in such manner as the provincial Govt. may by general or special orders, from time direct.
- (3) (a) Sub-tenants of whatever grade in existence on 3rd December 1920 and recognized by the Deputy Commissioner shall not be evicted except in accordance with sub-rule (8) nor their rent be enhanced except with the permission of the Deputy Commissioner.
- (b) Whenever any recognized sub-lessee terminate for any reason, the immediate landlord of the sub-lessee had a tenant under him, that tenant shall continue on the terms on which he holds.
- (4) No lessee or sub-lessee shall be allowed to sub-let the whole or any part of his land.
- (5) No lessee or sub-lessee shall be allowed to transfer by sale, gift or mortgage the whole or any part of his holding without the previous sanction of the Deputy Commissioner, who may no sanction any mortgage other than usufructuary mortgage to extend for a period not exceeding seven years and to provide for the extinction of the whole debt including principle and interest within that period subject to the condition that the mortgage will not in any event, be extended beyond that period, provided that the Deputy Commissioner may sanction a simple mortgage in favor of Government, or the Agriculture Development Bank of Pakistan or the Industrial Development Bank of Pakistan or Co-operative Societies, registered under the Bengal Co-operative Societies Act, 1940 (Bengal Act XXI of 1940) or the east Pakistan Agriculture Development Co-operation or any other loan giving agency for such period and subject to such conditions as he may deem fit. The Deputy Commissioner may, however, sanction mortgage of any holding to the East Pakistan Agriculture Development corporation for loans in ready advanced prior to the date of publication of this notification. Unauthorized transfer, will, in no instance, be recognized.
- (6) In all cases of unauthorized sub-lease or transfer, the Deputy Commissioner shall resume the land sublet or transferred and may either hold it khas or lease it out with the lessor or transferor, or with the lessee or transferee, or with any other person according to circumstance and the provision in the sub-rule (1).
- (7) No permission of a holding shall be made without the consent of the Deputy Commissioner.

²⁵¹ As amended by Notification No. S.R.O.72-L/79, dated 31 March, 1979, published at pages 1178, 1179, 1180 of the Bangladesh Gazette Extra, March 31, 1979.

(8) A sub-tenant recognized by the Deputy Commissioner is not liable to ejectment except by his order. A sub-tenant will ordinarily be ejected-

- (a) If the sublets or transfers any part of his holding or fails to show diligence or keeping the holding under cultivation;
- (b) If he fails to pay an arrear or rent recorded or fixed by Deputy Commissioner;
- (c) If he uses the holding in any manner that renders it unfit for the purposed of the tenancy;
- (d) If he enhances the rent of a recognized sub-tenant under him without permission of the Deputy Commissioner.

(9) The rent of a sub-tenant of any grade recognized by the Deputy Commissioner cannot be enhanced except the Deputy Commissioner. The rent of such a sub-tenant shall enhanced if the rent for the land held by him exceeds the rent paid by the landlord or, if the rent of the landlord is also under enhancement, the rent settled as payable by the landlord, by more than 50 percent except for special reasons to be recorded by the Deputy Commissioner in writing. The rent of such a sub-tenant may, may subject to this condition be enhanced by Deputy Commissioner up to such limit as he consider fair and equitable, on the application of the landlord, if the rent of the sub-tenant has been enhanced during the ten years previous to the application.

(10) Sub-tenants of whatever grade who have been recognized by the Deputy Commissioner shall have, subject to the provisions of the rules regarding ejectment and resumption, permanent and heritable rights in the land for which they pay rent.

(11) A tenant directly under government shall have permanent and heritable rights in the land for which he pays rent unless there is a define contract that his right is not permanent or heritable, subject to the provision contained in these rules for his lease, if any, regarding resumption;

Provided that he shall be liable to ejectment-

- (i) If he fails to pay an arrear of rent recorded or fixed by the Deputy Commissioner;
- or
- (ii) If he uses the land in any manner which renders it unfit for the purpose of the tenancy, or
- (iii) If in accordance with the terms of his lease, if any, he is liable to be ejected or the lease is cancelled any other reason;

Provided also that is in accordance with the terms of the lease or license under which the tenant was allowed to hold the land, all lands not kept under cultivation were liable to resumption, such lands shall be still so liable even though the period of such lease has the tenant continues to hold the land.

(12) The power of ejectment of a tenant or resumption of any land under sub-rule (II) shall be exercised by the Deputy Commissioner.

(13) Nothing in these rules, or any grant, lease or contract under which land is held in the Hill Tracts shall operate to permit the inheritance of any Hill Tracts land by non-residents of the District except with the express consent of the Deputy Commissioner who in giving his consent shall have regards to the principal of equity and as far as may be to the rights of

plainsmen which but for this rule would be operative. An appeal from such orders of the Deputy Commissioner shall lie to the Commissioner.

(14) The provisions of sub-rules (5), (6), (7), (11), and (13) will apply to existing tenancies only.

(15) The powers of the Deputy Commissioner under this rule may also be exercised by the Additional Deputy Commissioner.

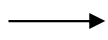
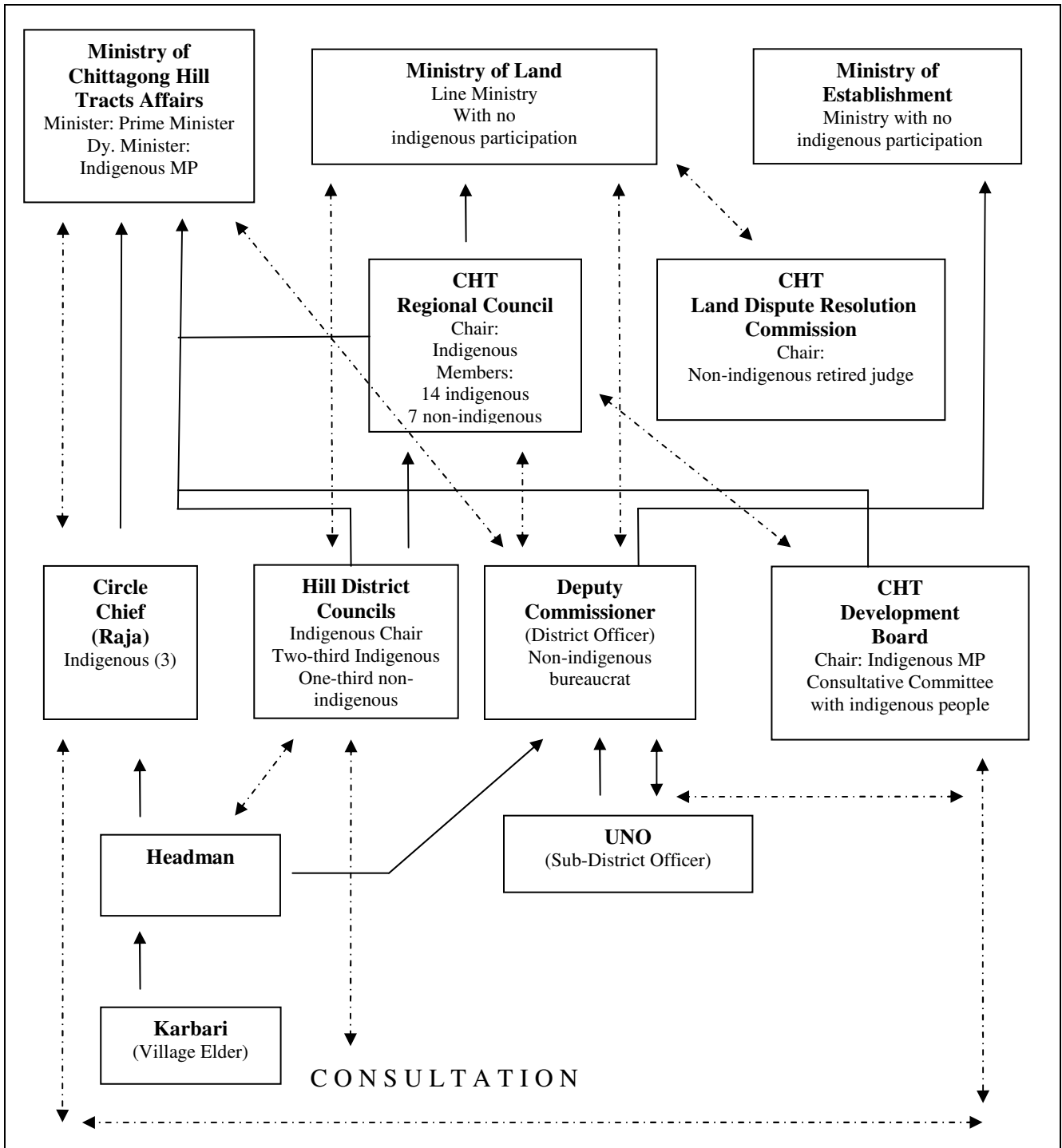
(16) The powers of the Deputy Commissioner under this rule may also be exercised by the Sub-divisional Officers concerned in their respective jurisdiction if so expressly authorized by the Deputy Commissioner by order in writing to exercise such powers.

EXPLANATION- For the purpose of this rule, family shall include the lessee, his wife, sons, daughters and any other relations dependent on the lessee and living in the same mess.²⁵²

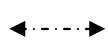
Source: Roy, Raja Devasish 2002: 58-61

²⁵² As amended by Notification No 1L-15/69/216-R.L., dated 16.09.1971 as published in the Dhaka Gazette, Part 1, dated 21st October, 1971

Institutions in the Chittagong Hill Tracts Administration



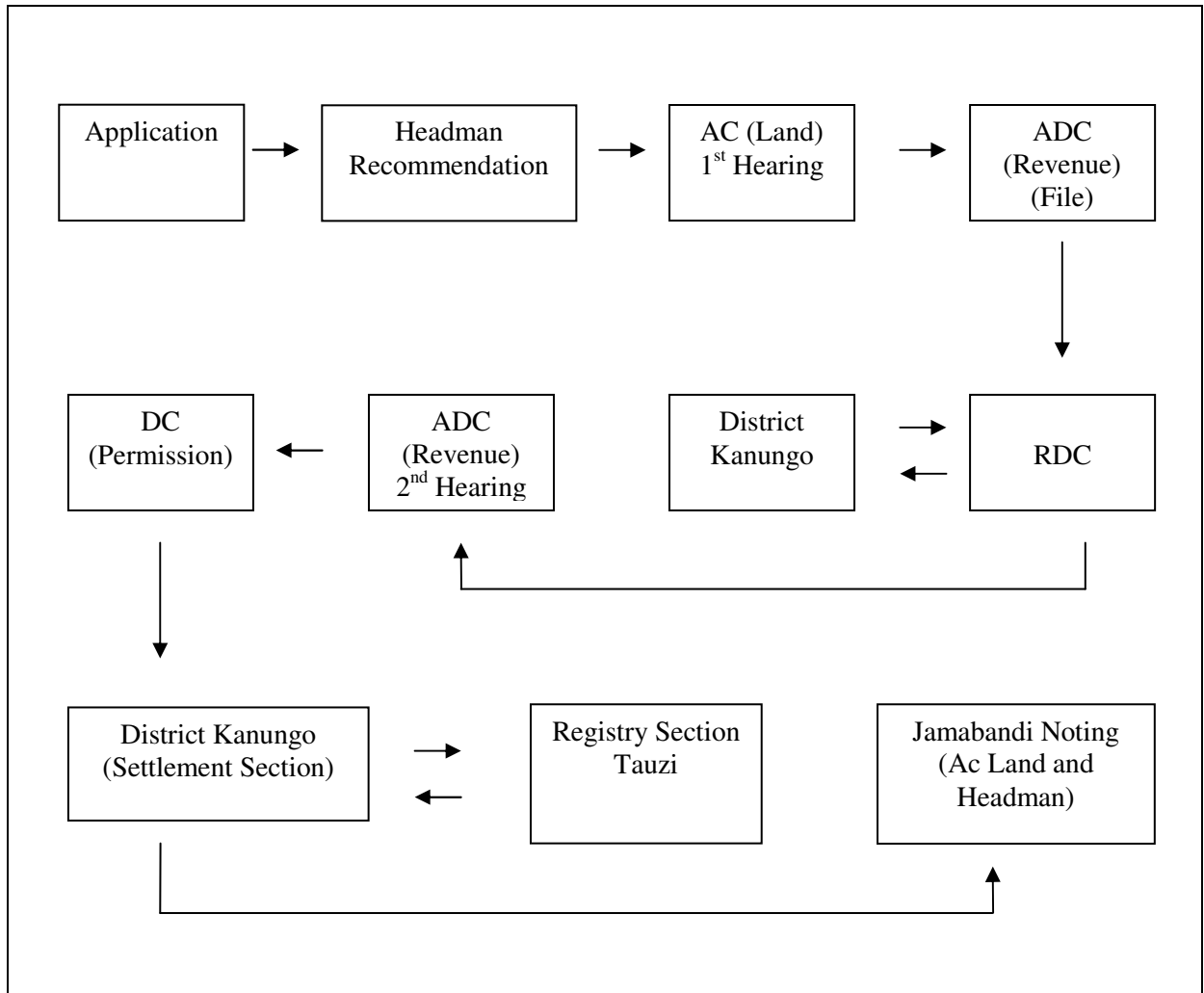
Denotes Relationship of Direct Control



Denotes Relationship of Supervision, Co-ordination or Consultation

Revised and modified from Roy, Raja Devasish 2008: 529-531

System of Land Title Transfer in CHT



Source: Roy, Raja Devasish 2002: 17

Appendix V

Photo 01: Chittagong Hill Tracts Land Dispute Resolution Commission Office, Khagrachari



Photo 02: Ejlaz (Court Room) of Chittagong Hill Tracts Land Dispute Resolution Commission

