

# Land Rights of the Indigenous People of the Chittagong Hill Tracts in Bangladesh

A Historical Analysis of Policy Issues

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Land rights of the indigenous people of the CHT is not like the other part of the country, their rights are based on customs and traditions that dates backs to many centuries. Various policies and programs have been implemented from the time of the first colonial power—the British—to the present national administration to strengthen overall national development, with little regard for their impact on the indigenous people and their way of life. The policies in post-partition and in Bangladesh period were with little regard for their impact on the indigenous people and their way of life. The objectives of the policies were centered on economic benefit alone but were not aimed at cultural assimilation. As a result, all policies and programs became consistent disregard for the indigenous people and their value systems and traditional life. The indigenous people lost rights from their ancestral land due to the implementation of many policies and programs in the CHT. The Peace Accord of 1997 addressed the indigenous land issues and there is an immediate need on the part of the Government of Bangladesh and the international community, to take immediate effective steps to resolve the issue of land and resource rights of the indigenous people of the CHT.

## I Introduction

Resource management in the mountain areas of many tropical and sub-tropical countries has now become a great problem. The indigenous people of those mountain areas have been managing the resources with their traditional knowledge and customs. The traditional economy of them is called as subsistence economy which is completely need oriented, which means that production aims—and therefore the overall level of production—are geared to fulfilling the totality of individual and communal needs. But many of the indigenous communities today find themselves confronted with conditions which have seriously disrupted their economies and social system and do not allow them to continue with their traditional resource use practices any more (Erni, 1995). Many of the encroachments on indigenous territories happen due to the policies and programs guided by the aim to make a more rational use of land and resources. When communities traditionally have managed resources sustainably, government claims may destroy any incentive to continue to do so (Lynch and Alcon, 1994).

Like other indigenous territories in the world, various policies and programs have been implemented from the time of the first colonial power—the British—to the present national administration, in the Chittagong Hill Tracts (CHT) of Bangladesh. Sometimes the policies and programs contributed towards political and economic chaos in the region frequently stained by bloodshed. Because many of these programs were the consistent disregard for the indigenous people and their value systems and traditional knowledge (Roy, 2000). The denial of the land rights of the indigenous people to exist as a separate and distinct people with their own tradition, culture and practices is seriously undermining in the CHT.

Systematic studies on the CHT in general, socio-economic aspects in particular, are strikingly limited. Prior to the Peace Accord in 1997 between the government and Jana Sangati Samiti (JSS), a political platform of indigenous people, the CHT had practically

remained inaccessible for research and empirical exploration for long two decades. The last few years, however, have been seen something of an upsurge in the literature on the CHT. International aid agencies have commissioned a number of explanatory surveys mainly to assess the local needs and development potential of the indigenous people in the CHT (e.g., DANIDA, 2000; ADB, 2000; AusAid 2000). Gain (2000) provides an introductory overview of the ecology and living conditions in the CHT. Amin (2000) compiled a useful summary of the major public legislation regarding governance of the CHT. The Tribal Cultural Institutes and CHT Hill District Councils published popular literature on varied aspects of ethnic life and culture in the CHT (e.g., TCI, 1994; Lewin, 1998). Roy (2000) offers a detailed account of the politics of land rights in the CHT, focusing on such issues of land laws, role of selected international conventions and institutions. Van Schendel *et al.* (2000) introduce the life and livelihoods of the people of the CHT. Chakarborty (2001) has compiled some historical records on the shifting cultivations in the CHT. A number of international observers have assessed the political and human rights situation in the CHT such as CHT Commission (1991) and Tebtebba Foundation (2000). Although there are some studies on the CHT, but many of them are in a limited perspective for certain factual and quasi-reasons. Basic, in-depth studies are conspicuous by their absence or very limited presence. No serious study has been carried out specially emphasizing on the policies and land rights of indigenous people of the CHT. Not many people, inside the country and outside as well, are well-informed of the background associated with the land problems which has led up to the present critical status in the CHT (Gain and Morol, 1995).

## **II The Objectives and Methodology**

It is important that the land issues of the CHT should be addressed in a comprehensive manner and an historical analysis of the policy issues should be necessary. This article attempts to examine the impacts of the policy and programs on the land rights of the indigenous people of the CHT. The objectives of this study are (1) to provide a description of the major policies and programs implemented in the CHT, and (2) to draw out a picture of how the indigenous people lost their rights to land due to implementation of those programs and policies. This article addresses mainly the common rights of land, private rights are not focused here due to the space limitation of this article.

The study has been carried out mostly analyzing the historical facts of different periods of time. The emphasis has been given on the policies adopted after the independent of Pakistan in 1947 to the recent time. Information of this article is collected from literature survey, ethnographic studies, reports, legal documents, as well as interviews with the indigenous leaders and some researchers who were engaged in carrying out some studies on the CHT issues.





Source: Roy, 2000

The CHT has forest of 83.8% of its total area. All the forests owned by the national government are divided into Reserved Forests and Unclassed State Forests (USF) (Table 1). Reserved Forests are managed by the Bangladesh Forest Department and the USFs are under the control of local district authorities. Population-wise the CHT have the lowest density in the country of 96 persons per square kilometer compared to the national average density of 827 persons per square kilometer (Gain, 2000).

**Table 1 Indigenous Population by Race in the CHT**

Race	Rangamati	Khagrachari	Bandarban	Total
Bawm	549	0	6,429	6,978
Chak	319	0	1,681	2,000
Chakma	157,385	77,869	4,163	239,417
Khumi	91	0	1,150	1,241
Khyang	525	0	1,425	1,950
Lushai	436	0	226	662
Marma	40,868	42,178	59,288	142,334
Mru	126	0	0	126
Murong	38	40	21,963	22,041
Pankho	3,128	0	99	3,227
Rakhain	70	0	0	70
Tanchangya	13,718	0	5,493	19,211
Tripura	5,865	47,077	8,187	61,129
Others	174	355	229	758

<b>Total</b>	<b>223,292</b>	<b>167,519</b>	<b>110,333</b>	<b>501,144</b>
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Source: Bangladesh Bureau of Statistics, Population Census Report, 1991.

#### IV 'Land Rights in the CHT'

Land rights in the CHT are based on traditional occupations, with the land and its resources providing the enabling environment for subsistence activities. Indigenous land rights are conceptualized within the framework of a separate legal regime, distinct from that of the rest of the country. It is inherent, inalienable, and is conceptualized within the framework of customary rights. Rights and interest of land is administered by the indigenous institutions<sup>[1]</sup> according to customary law and include provisions for the control, use and management of the land and its resources (Roy, 2000).

The CHT Manual<sup>[2]</sup> recognizes a variety of rights over land. For purposes of convenience, these rights have been divided into two broad categories, namely, private right and common rights. By private rights are meant the rights of individuals over a clearly demarcated piece of land. In the case of such privately held lands there is no distinction between the indigenous people and Bengali. The right to occupy such lands without formal settlement is specially reserved for the indigenous people. The common rights of land includes the rights to *jum*<sup>[3]</sup>, to use forest resources for domestic purposes, to graze cattle on the common village pastures, to occupy non-urban lands for homesteads, and so on.

**Table 2 Land Utilization of CHT and Bangladesh**

(in 000 hectare)

	CHT	%	Bangladesh	%
Total Area	1,335	100.0	14,906	100.0
Forest	1,120	83.8	2,265	15.2
Reserve Forest	268	24.0	1,375	60.7
USF	840	75.0	733	32.4

Source: Bangladesh Bureau of Statistics, 1999

#### V Policies and Programs of Different Periods of Time

During pre-colonial era in the CHT, land was either communally owned and cultivated or, outside the cultivated areas, not owned by anyone or any community. All members had free access to land, forests, rivers, and natural resources. There was no private property in land (Dewan, 1990). The CHT was first ceded to the British East India Company in 1760 and following the Soldiers Uprising of 1857, the British took over the direct administration of the Indian colonies from the East India Company. (Mohsin 2000; Gain and Morol, 1995).

##### 1 British Colonial Period (1857-1947)

Initially the British followed a policy of non-interference, as far as possible, in the internal affairs of the CHT. For this reason, the indigenous Chiefs were given autonomy to run their internal affairs according to their customs, language, culture and religion (Dewan, 1990). The British recognized the CHT as an area distinct from the rest of the country, and as a matter of policy its administration, including that pertaining to land matters, has always been distinct from the plain districts. However, as the indigenous system of land tenure in the CHT differed from British concept of land administration, the colonist government proceeded to restructure the land revenue system and to bring it into greater conformity with



their system of land tenure. In keeping with this approach, a series of administrative and legislative measures were passed culminating in CHT Regulation of 1900 (Roy, 2000).

### **(1) The Regulation 1 of 1900 (CHT Manual)**

The CHT Regulation 1 of 1900, popularly known as CHT Manual, laid down a detailed constitution for the administration of the CHT, showed the legitimacy of the customary rights. It ought to be noted that these rights were not created by the Manual, but acknowledged by it, in a qualified manner. Rule 34 of the regulation restricted possession of land by outsiders in the CHT and under Rule 52, no non-indigenous people could enter or reside in the CHT without obtaining permission from the Deputy Commissioner (DC). Under Rule 51, the DC had the power to expel anybody from the CHT within 24 hours if he or she was found to be undesirable. Notable in the Rule 52 of the regulation was that:

"No person other than Chakma, Mogh or a member of any hill tribe indigenous to the Chittagong Hill Tracts, the Lushai hills, the Arakan hill tracts or the state of Tripura shall enter or reside within the Chittagong Hill Tracts unless he is in possession of permit granted by the Deputy Commissioner" (CHT Manual, 1900).

While the ultimate authority was appointed by the British, the CHT was administered under the Regulation of 1900. In 1935 the CHT became totally 'excluded area' under the 1935 Government of India Act recognizing the special status of the region.

## **2 Post-partition Period (1947-1971)**

Two hundred years of British colonial rule in India came to an end August 1947 with the emergence of two independent and sovereign countries Pakistan and India. The development and changes that followed the partition of India in 1947 have had horrendous implications for the indigenous people particularly in the areas of land dispossession and disturbance to their economic and cultural life (Gain and Morol, 1995).

### **(1) Change of the Special Status**

Following the independence of Pakistan, the indigenous people began to lose their traditional rights and privileges which they had enjoyed throughout British rule in the CHT. The losses began with the abolition of indigenous police force (established in 1888) in 1948. Formulation of new constitution of Pakistan in 1962 also lessened the traditional power of the ethnic leadership and "systematic but clandestine colonization of the CHT by Bengalis began" (Gain and Morol, 1995). In 1964 the status of the CHT as 'excluded area' was changed to 'tribal area' indicating the area as the home of tribal people. With the 'special status' abolished, the ethnic leadership lost control over land among other things.

### **(2) Creation of Hydro-electric Project**

A hydroelectric power plant was started in the Karnaphuli river at Kaptai village of Rangamati district, which was completed in January, 1962. The project was implemented under an USAID program in the CHT. The immediate fallout of the project was that an artificial reservoir (known as Kaptai Lake) covering a huge area of 663 square kilometers came into being submerging dwelling houses of 18,000 indigenous families as displacing approximately 100,000 people from their hearths and homes (Gain, 2000). This artificial reservoir also submerged 21,950 hectare of arable land, about 40% of the total cultivable land, created a serious crisis of arable land in the region. Besides, the reservoir submerged many establishments like schools, markets, hospital and about 689 square kilometers of forests (Bangladesh District Gazetteer, 1975). The indigenous people did not receive any compensation for the loss of their common land which compelled a large number of displaced indigenous families to migrate to India (Gain, 2000; Roy 2000).

## **3 Bangladesh Period Since 1971**

Bangladesh emerged as an independent state in 1971 from what was then East Pakistan after the turmoil of a bloody civil war. The denial of the constitutional recognition of the indigenous people of their separate national entities by the first government of independent Bangladesh brought towards political and economic chaos in the CHT frequently stained by bloodshed. In 1976, the then government declared the problem of the CHT originated from underdevelopment and a good number of development programs or projects were adopted in the CHT. Many of these programs and policies had direct impacts on land rights of the indigenous people. Two of the major programs of these are discussed below:

### **(1) Population Transfer Program**

The amendment of Rule 34 of the CHT manual in 1979 did away with the restrictions against settlements of CHT land by non-residents. As a result, in 1979 and in the next few years, as one of the various measure undertaken by the Government of Bangladesh to settle 400,000 landless plains families in the CHT. In order to encourage the plains families to move to the CHT, various incentives in cash and in kind were offered (Roy, 2000). Migration from the plain districts was a constant threat to maintaining the separate identity of the indigenous peoples and their area. The impact of this program on the land rights of the indigenous people was far-reaching, and problematic. The transmigration program was undertaken providing the settlers families with a fixed amount of government owned *khas* land. What the government regards as *khas* land is essentially the indigenous people's *jum* land and forest land. For the indigenous people this land is common property belonging to the community or kinship groups. But the government ignored this indigenous view of common property, which is regarded by the hill people as a gross violation of their inalienable rights. The settlement policy has rendered around 100,000 indigenous people homeless by ejecting them from their traditional lands About half of them crossed over to the Tripura and Mizoram states in India as refugees (Mohsin, 2000).

### **(2) Militarization in the CHT**

Another policy that has had grave repercussions for the indigenous people, has been the government's counter-insurgency strategy in the CHT. As a counter insurgency measure, there is a large number of armed personnel in the CHT. The CHT Commission described the CHT "a military occupied area". The military dominates all sphere of life. The involvement, and the influence, of the armed forces is to confined to security matters, but extends to socio-economic issues (CHT Commission 1991). The application of this counter-insurgency strategy in the CHT has been a major factor in the problem of land dispossession of the indigenous people as a result of the policy. As a major thrust of the counter-insurgency strategy has focused on relocation and resettlement of the indigenous people and thus many were forced to leave their lands and their homes and move to designated areas where they remained under military control and surveillance. The Bangladesh Army occupied lands of many indigenous people to set up army camps. The lands were simply taken over, and the indigenous people did not receive any compensation, financial or otherwise (Roy, 2000).

CHT commission (1994) has received reports from both the population transfer program and militarization concerning violation of land rights. There are many cases of violation of indigenous land rights which had been perpetrated by Bangladesh security force and Bengali settlers. Some mentionable events were took place in Malay village of Rangamati on 2 February 1992, Logang village of Khagrachari district on 10 April 1992, Naniarchar of Rangamati district on 17 November 1993. Bengali settlers supported by the Bangladesh army, attacked these indigenous villages and took their land. These villages are now inhabited by Bengali immigrants only.

### **(3) The Peace Accord of 1997**

After over twenty years of ethnic violence, the Government of Bangladesh and Jana Sangati Samiti signed a Peace Accord on December 2, 1997. The accord provides limited autonomy to the indigenous people of the CHT. Major development with regard to land-related issues is the formation of a Commission on land, expected to provide quick inexpensive and easy

remedies for cases of land dispossession taking into account local customs and usage with regard to land right and land claims. The Land Commission to be constituted with a retired judge of the high court of Bangladesh as Chairman (head). The terms of reference of the Commission suggest that it is open to both the indigenous and non-indigenous settlers to complaints before. The fact is that the majority of the members of the Commission will be indigenous indicates, that at least theoretically, it will have the benefit of their knowledge and experience with regard to land claims based upon indigenous customs, practices, usage and local conventions governing the use and ownership of such as those of 1900 (Roy, 2000).

## **VI Discussion**

Historically, the CHT existed as an independent territory and did not come within the authority of outside colonization until the 18th century (Bangladesh District Gazetteer, 1975). The indigenous people of the region have lived in the interior hilly uplands for several hundred years as "near-sovereignities". Extension of outside government apparatus to them dates back only about a century, but even early period of post-partition in 1947 government control was merely confined (Choudhury, *et al.* 1979). The government policies started to shift in the post-partition period which marked the most important land mark in the history of the indigenous people of the CHT. We can discuss the policies in two major shifting:

### **1 Policy to Maximize Economic Return**

In 1960s the government's policy towards the CHT shifted dramatically to maximize economic returns. This was encouraged by the aid-giving western countries which stressed economic growth. Consequently, the Kaptai Hydro-electric project was constructed with the funding with USAID funding in 1962. The dam uprooted more than 100,000 indigenous people living in fertile valleys for generations (Roy, 2000). There had been huge loss of valuable belongings shelters and health etc. with a very insignificant compensation in monetary terms to some of the fortunate only. At the time of the construction of the dam, prior impact assessment studies were not existent, and had not entered the social consciousness as intrinsically as they have today. The people displaced by the dam have never been in position to regain their former economic viability.

The experience of indigenous peoples and ethnic minorities with development projects (e.g., dam creation) in many other countries became failure to bring anything positive for development. Chico River Dam in the Philippines, Narmada Dams in India Pangué Dam in Chile etc. were created with the fund of international organizations. These projects were rife with alienation, dispossession both from their land and other resources, lack of compensation or inadequate compensation, human rights abuse and lowering of living standards (Fox and Brown, 1998)

### **2 Policy to National Integration**

After the independent in 1971, Bangladesh moved ahead with the formulation of its constitution. The Constitution of Bangladesh adopted by the Bangladesh Parliament on November 4, 1972 which was a reflection of the ideal of Bengali nationalism. It did not recognize the existence of other national communities in the Bangladesh, indeed made no provision for a special status of the CHT. While migration of non-indigenous people from the plains to the CHT was prohibited in the Manual, it was pouring in during a post independent Bangladesh. An analysis of the main provisions of the constitutions would reveal the bias of the constitution towards the dominant Bengali community and its failure either to incorporate or protect the indigenous people (Mohsin, 2000). Mr. M. N. Larma, a Member of Parliament expressed his opinion in the National Parliament:

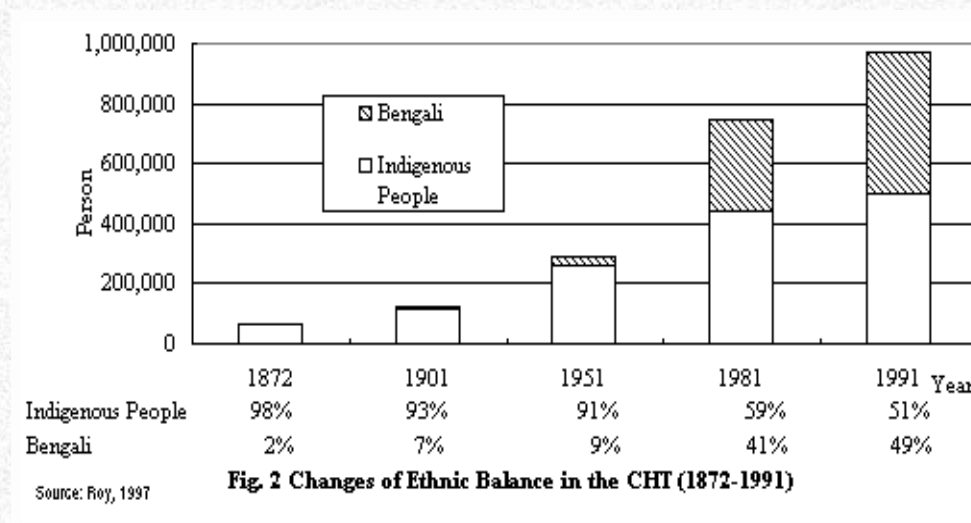
"The British had given recognition, to our separateness, the 1962 Constitution of Pakistan duly recognized our separate status....but from the Constitution of Bangladesh we have not gained anything....it comes as a surprise to me that the



framers of constitution have forgotten my land, my people...We have been deprived of our rights, the country has become independent, but we continue to have a cursed life" (Cited in Shelly, 1992).

This statement was interpreted by the ruling elites as a challenge to Bengali nationalism and meanwhile, massive military deployment took place in the CHT as the demand for regional autonomy grew momentum. Later the government took decision to settle landless Bengali families to the CHT. The real motive of the government in making this move is to ‘colonize’ the CHT by bringing about a demographic shift in the region (Mohsin, 2000). The trend in proportion of the total population for the indigenous and Bengali people is shown in Figure 2. It shows how fast the indigenous people are becoming minorities in their ancestral homeland. The population transfer program had resulted in transforming the indigenous people into landless laborers without a land or resource base for their subsistence activities.

We have no example of the success of this type of national integration policy in other developing countries. In Indonesia, transmigration program did not help national integration, rather it became the basis for the ethnic conflict in the country (Suryadinata, 1999).



It was mentioned earlier that the CHT Manual recognized the CHT as a home land of the indigenous people. It contains many provisions that seek to safeguard the interests of the indigenous people, including their land rights. But the Manual (especially Rule 34) was amended in different times during implementation of any policy and consequently the indigenous land rights were violated.

## VII Final Note

The policies in post-partition and in Bangladesh period were with little regard for their impact on the indigenous people and their way of life. We can say that the objectives of the policies were centered on economic benefit alone but were not aimed at cultural assimilation. However, one feature common to all policies and programs was consistent disregard for the indigenous people and their value systems and traditional life. As a result, the relationship between the state and the indigenous people of the CHT has been anything but harmonious. Instead it has been conspicuous for the ignorance and suspicion of one side, and the dissatisfaction and mistrust of the other. Although the Peace Accord addressed the land issues, but no significant effort has been taken till date. There is an immediate need on the part of the Government of Bangladesh and the international community, to take effective steps to resolve the issue of land and resource rights of the indigenous people of the CHT.

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[1] Indigenous institutions include the Chief, headman and *karbari* in the circle, *mauza* and village level respectively.

[2] Details on the CHT Manual is described in Section V(ii).

[3] *Jum* is a traditional swidden system of cultivation, a subsistence agriculture, practiced by the indigenous people of the CHT.