



Graduate School of Development Studies

**The Land is not Ours:
Alienation of Land Rights of the Jumma in the
Chittagong Hill Tracts, Bangladesh**

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List of Acronyms

ACHR	Asian Centre for Human Rights
AI	Amnesty International
CHT	Chittagong Hill Tracts
GOB	Government of Bangladesh
HDC	Hill District Council
HWF	Hill Women's Federation
ICCP	International Covenant on Civil and Political Rights
IDMC	Internal Displacement Monitoring Centre
ICESC	International Covenant on Economic, Social and Cultural Rights
JRWA	Jumma Refugees Welfare Association
PCP	Pahari Chattra Parishad (Hill Students Council)
PCJSS	Parbattya Chattogram Jana Samhati Samiti (JSS for short)
PGP	Pahari Gano Parishad (Hill People Council)
RC	Regional Council
RJRWA	Returnee Jumma Refugee's Welfare Association
UPDF	United People's Democratic Front

Abstract

Over the centuries indigenous peoples have developed a profound relationship with their lands and territories. Despite this fact, they are still looking for a place for themselves (Gilbert 2006: xiii). Most indigenous communities have land-based economies, and are therefore dependent on having access to land in order to survive. This paper is concerned with the indigenous peoples called the Jumma, living in the Chittagong Hill Tracts in Bangladesh. The Jumma have experienced to be alienated from their land through centuries, and are until this day struggling to get recognition of their right to access and use their ancestral land. Successive governments have tried their best to assimilate the Jumma people into the majoritarian Bengali society without succeeding. As a result, failed policies has led to civil war, killing thousands of people and creating a large number of refugees and internally displaced. In 1997 a major turn of event occurred when the government of Bangladesh and the JSS –a political Jumma party signed a Peace Accord. This was seen as a positive sign on both sides to end the bloodshed. However, the peace agreement turned out to be a series of promises not kept, creating new tensions in the area. The main concern for the Jumma throughout the years has been to get recognition of their status as a distinct people with their own customs and traditions, including the right to collective ownership and use of land. This right has constantly been challenged, and is until this day not protected through any legal remedies.

Relevance to Development Studies

Indigenous people's rights have gained a growing awareness and concern in the human rights discourse the last few years. The Permanent Forum on Indigenous Issues and the new Declaration on Indigenous Peoples adopted in 2007 are two examples of such. The issue most frequently discussed with regards to indigenous people is the land issue. There are numerous examples across the world of how the land rights of indigenous groups have been compromised or totally neglected to give way for large development projects, or simply because they don't fit into the projects and plans of governments.

Keywords

Land rights, collective rights, indigenous people, Jumma, Chittagong Hill Tracts

Chapter 1 Background and Basics

1.1 Introduction:

Land rights are of fundamental importance to indigenous peoples since they constitute the basis of their economic livelihood and are the source of their spiritual, cultural and social identity. Most indigenous communities have land-based economies whose way of life, both in terms of their livelihood and within a cultural context, is linked to the land they traditionally occupy (R.C.K Roy 2000: 12, Niezen 2003: 20). However, the process of development has led at times to the dispossession of these traditional lands and territories, posing severe problems for indigenous peoples with regard to their livelihood. As a consequence many indigenous people are being alienated from their land, leading to increased poverty, loss of cultural identity and lack of human security.

In the name of national economic development, various policies are being put in place, such as establishment of national parks, massive logging of forest and large infrastructure projects such as dam and pipelines. Indigenous peoples are particularly affected by the constructions of dams because they are frequently found in more isolated areas and because of their special sacred ties to their territories (Gray 1996: 101, Vandergeest et al 2007, Patwardhan 2000)¹. These policies dispossess indigenous peoples of their lands and natural resources and threaten to undermine their cultures and survival as distinct peoples. The effect of such development-induced displacement is felt especially strongly among socially and economically vulnerable groups and indigenous communities worldwide (Vandergeest et al 2007: 6).

Another threat to the indigenous peoples is the general trend to favour individual land ownership rather than collective land rights. This opens up not only for the privatisation of land and resources but also for sale of land to non-indigenous individuals and business interests. In Kenya for example, privatization of land has contributed to a deterioration of Masai pastoralism leaving them stockless and making them into day labourer (Forstater 2002: 65). The commercial exploitation of land has been going on ever since colonial time, and has historically been one of the most important reasons for deterioration of collective land rights.

The International human rights standards as well as State standards and practices are increasingly recognizing that indigenous people should have rights over their land. The recognition of indigenous peoples' land rights has to be seen as one of the most pressing issues for the survival of indigenous peoples (Gilbert 2006: xiv). The most recent declaration manifesting the rights of indigenous peoples is the United Nations Declaration of Indigenous Peoples,

¹ For more information on dams and development, go to www.dams.org

adopted by the General Assembly on 13th of September 2007². The Declaration is the most comprehensive statement of the rights of indigenous peoples ever developed, giving prominence to collective rights to a degree unprecedented in international human rights law.

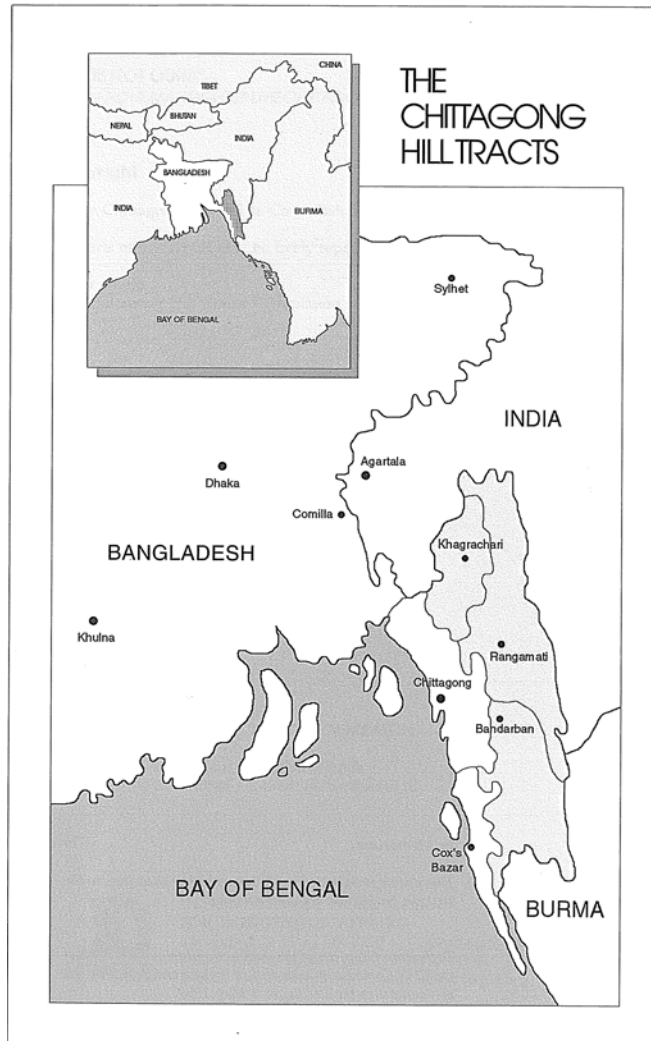
The adoption of this instrument is the clearest indication yet that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples. It has a broad consensus internationally, with only four countries voting against it and eleven were absent³.

This paper is concerned with the situation of indigenous peoples of the Chittagong Hill Tracts of Bangladesh. The 12 indigenous groups living in the area is commonly known as the Jummas. The name is due to their common practice of slash and burn cultivation (rotational agriculture), locally known as *jum*. Key aspects of this type of agriculture are the idea of shared usage of the land and a collective ownership of land. There are approximately 600000 indigenous people in the Hill Tracts, and the dominant religion is Buddhism, as opposed to the state religion islam⁴. (R.C.K Roy 2000: 19). The indigenous peoples of the Chittagong Hill Tracts are mostly of Mongolian stock, and are closer to their neighbours in north-eastern India, Thailand and Burma than to the majority Bengali population. The Jumma thus are, in ethnic, cultural and religious terms, very different from the majority Bengalis.

² UNDOC/GEN/N06/512/07

³ <http://www.un.org/esa/socdev/unpfi/en/declaration.html>

⁴ The Chakmas, Marmas, Tanchangya, and partially the Mru are Buddhists, the Tripuras are Hindu, the Lushais, Pankho, and Bawm and some Mru are Christians, while others retain their traditional religion (R.C.K Roy 2000: 19)



1.2 The History of Bangladesh and the Chittagong Hill Tracts

1.2.1 The area of concern

Bangladesh is situated in South-Asia, with Burma as a neighbour in the east and India in the west. It is one of the most densely populated countries in the world, with approximately 150 million people sharing 55000 square miles (Wikipedia). The majority of the population are Bengalis, but there is a minority of about 2,5 million indigenous peoples or *adivasi* (original inhabitants) belonging to 45 different ethnic groups. These are concentrated in the north and south-east of the country. The Chittagong Hill Tracts (CHT) in the south-east is home to the country's largest concentration of indigenous peoples. The CHT is important to the government for

strategic and economic reasons, because the region is rich in natural resources, such as gas, coal and copper.

1.2.2 The political history of Bangladesh

The political history of Bangladesh has been long and complex, and has influenced the Jumma people's in different ways depending on the governing authority. In 1760 the CHT came under British colonial rule and from 1760 to 1860, like other parts of colonised India, it was ruled by the East India Company on behalf of the British Government (Rasul 2005: 5). The East India Company did not directly intervene in policy and administrative matters in CHT. Rather, it followed a policy of exclusion and isolation (Barua 2001). In 1900 the British government promulgated the CHT Manual, which detailed rules and regulations for administration of the area. The 1900 Regulation restricted the permission of non-indigenous people to enter or reside in the area. It also prohibited sale and transfer of land to non-indigenous people, and allowed for the CHT to be an autonomous district under British rule (Acharya 2000: 1, Ali 2002: 67, Paliwal 2005: 24). The Jummas thus could practice their traditional jhum cultivation in line with their customs and practices without much intervention from people not belonging to the area. This in turn, contributed to the protection of their collective land rights.

However, when the Indian sub-continent was divided in 1947, into India and Pakistan, the CHT became a part of East Pakistan. This decision was made without any consultation with the Jumma leaders, who preferred to belong to a secular democratic India (Paliwal 2005: 25). With religion the only commonality between East and West Pakistan, separated by India and a distance of 1000 miles, differences soon emerged between the two linguistically and culturally distinct regions (Mohsin 1997: 19). Not long after the Indian sub-continent was divided, the people living in East Pakistan (the majority of whom were ethnically Bengalis and separated from their neighbours in the Indian State of West Bengal) started a movement for autonomy. This movement ultimately culminated in the nine-month war for the liberation of Bangladesh (the land of the Bengalis), which gained independence in December 1971 (Mohsin 1997: 19).

After Bangladesh succeeded to break free from West Pakistan, the Jumma continued their struggle for autonomy within the new state of Bangladesh. The process of creating a nationstate introduced the element of hegemonism as the Bengali political leaders chose the dominant community to be the model of nation, while the subordinate minority communities were expected to assimilate themselves with the dominant mainstream (Mohsin in Roy et al, 2000: 59). As a result the indigenous groups were not being recognised in the Constitution of Bangladesh. Article 6.2 says *the citizens of Bangladesh shall be known as Bangladeshis*. There is thus no room for a separate indigenous identity. Unofficially the indigenous people are included within the “backward section” of the population (Articles 14, 28 and 29). However, the Jumma refused the title as a sub-ordinate minority within the nationstate, and has constantly fought for their right to be recognised as a distinct people with their own culture and traditions⁵.

The denial of constitutional recognition of their separate identity as indigenous peoples brought political and economic chaos into the CHT frequently stained by bloodshed (Ali 2005: 68). “Underdevelopment” has been used as an explanation to the instability and disturbances in the CHT. Successive governments have therefore implemented several policies to develop the area, some which had direct impact on land rights of the Jumma. These policies are further elaborated in chapter 3. Hundreds of thousands of

⁵ The Jumma leaders made four demands to the new Prime Minister Sheikh Mujibur Rahman. These were autonomy for the Chittagong Hill Tracts, together with provisions for a separate legislative body; retention of the provision of the 1900 Regulation in the Bangladesh Constitution which allowed a form of self government; the continuation of the offices of the traditional tribal chiefs; a constitutional provision restricting amendment of the 1900 Regulation; and the imposition of a ban on the influx of non-tribals into the area. (Mohsin 2004: 46). All of the demands were declined immediately. The history tells the meeting at Sheikh Mujib's office only lasted four minutes, and the Jumma delegate was not even invited to be seated (CHT Commission 1991: 14).

Jummas have been forced to flee to neighbouring state Tripura in India, as well as being internally displaced as a result of the war.

A major turn of event occurred in 1997, when the JSS –the political Jumma party, and the Government of Bangladesh signed a Peace Accord to end 25 years of civil war. The CHT continued to be one of the most heavily militarized zones in the world with its approximately 100,000 troops stationed in the region (IWGIA 2007). It was also important strategically for the military due to the ongoing insurgency in Burma and in the Indian northeast (Mohsin 2003: 16). Nevertheless, the Peace Accord was a major breakthrough in modern history which gave hope for lasting peace and prosperity.

1.3 Objectives of the Research Paper

The paper analyses the processes and the problems of land alienation and land rights experienced by the indigenous peoples in the Chittagong Hill Tracts (Jumma) in Bangladesh. It does so by:

- Examining the historical factors that have contributed to loss of their land rights, as well as the ways in which they have resisted and contested these deprivations.
- Studying the impact of the Peace Accord of 1997 on the Jumma peoples collective land rights
- Reflecting on the refugee situation in relation to their land rights and the impact the displacement of Jummas has had on the land distribution and land ownership for returning refugees.

1.3.1 Research Questions:

The main question for this research is how have the collective land rights of the Jumma, as reflected in customary laws, been challenged historically and in the current context, and what are the implications these challenges hold for their overall identity as an indigenous group?

The research is also guided by the following sub-questions:

1. What has been the customary law and practice for the Jumma with regard to land use?
2. How has the collective land rights been eroded by the government policies in colonial and post-colonial period?
3. What has been the outcome of the Peace Accord of 1997 with regards to keeping the Jumma's collective land rights?
4. What are the problems faced by returning Jumma in the contemporary context with regards to land distribution and ownership?

The guiding proposition of the research is that the land rights of the Jumma, which were governed by collective use and ownership based on customary law and practices, have been eroded by different government policies. This in turn, has challenged their collective identity as an indigenous group.

1.4 Justification of the Paper

The reasons for choosing this particular subject are twofold. In recent years, there have been significant advances in international thinking and action on indigenous issues and rights. A Permanent Forum on Indigenous Issues has been established, recognising the importance of taking indigenous rights seriously. In addition, there is a growing awareness of indigenous rights worldwide through global networking.⁶ One of the rights most often violated is the right to own and use land. Considering land being the basis for indigenous people's livelihood it is therefore extremely important that land alienation ends.

Second, my experience with working in this region with this group in Bangladesh has served to increase my commitment to improving their land rights. This research will hopefully be a relevant step in that direction.

1.5 Methodology

Given the importance of collective and group rights of indigenous peoples with regard to land, chapter two initially discusses the different concepts and their relationship to customary law. However, these customary laws are often being neglected or challenged by governments who have different priorities. The notion of collective usage of land is a pillar for many indigenous peoples across the world and is enshrined in their customary laws. By conceptualizing the right to collectively use the land I reflect upon how this land usage is separate from an individual usage of land. Another reason for looking at the dynamics between individual and collective rights is because little has been written about this so far. Chapter two also takes on board the implications of development projects, and how these leads to displacement of indigenous peoples.

The paper uses a historical approach to analyse the land rights of the Jumma. Looking at history provides some evidence for land rights, as well as

⁶ For more information on indigenous global networking, read *The Origins of Indigenism: Human Rights and the Politics of Identity* by Ronald Niezen (2003)

giving a better understanding of the contemporary situation. Chapter three gives an historical analysis of the land alienation process, as well as illustrating the Jumma resistance against successive government policies.

In chapter four I look at the process of land alienation in the aftermath of the Peace Accord signed in 1997. In theory this peace agreement could have been the end of land alienation in the Chittagong Hill Tracts. I have therefore analysed in which ways this peace agreement is taking into account the Jumma peoples notion of collective land rights when solving land disputes. The peace agreement could give a stronger mandate for collective land rights if implemented properly. In the opposite scenario, the Peace Accord can be used as an excuse to continue land alienation policies.

Chapter five discusses the refugee situation in the CHT. The civil war has led to hundred of thousands of displaced people. If repatriated successfully, the Jumma can maintain their collective land rights. In the opposite scenario, more land disputes occurs, leading to more land alienation and erosion of collective land rights.

In the final chapter I have drawn conclusions from all the chapters and summarized the Jumma struggle to keep their collective land rights. My conclusion is not an attempt to make policy recommendations or to state what is the right or wrong thing to do. The situation in the CHT is far too complex for me to give any recommendation as to what is the right way forward. The final chapter also looks at the new human rights discourse evolving, which takes into account the global networking on indigenous peoples' right to collective ownership and use of land.

1.5.1 Sources of Data

The research has primarily used qualitative methods, combining both primary and secondary data. The primary data have been the existing international human rights law from which human rights are to be fulfilled, respected and promoted first and foremost by the state. These instruments are:

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- ILO 169 Convention; Indigenous and Tribal Peoples in Independent Countries (1989)
- United Nations Declaration of Indigenous Peoples (2007)
- Convention Relating to the Status of Refugees (1951)

These are the international instruments most relevant with regards to indigenous people's rights. In particular the ILO 169 Convention and the Declaration of Indigenous Peoples are important with regards to land rights and the protection of collective rights. The other instruments are important because they protect the fundamental rights and freedoms of all people, including the indigenous population.

In addition to being international standards and guidelines these instruments can be important in the issue of reclaiming land rights. If there is a limited domestic law on the issue, the international standards can give answers as to what rights the indigenous people have.

The secondary data have been collected from library -and internet sources relevant on the issue. A lot of the data written on the issue stems from researchers with indigenous background themselves. This is positive in the sense that they have first hand knowledge about the situation they are writing about. On the other hand there is a need to be critical with regards to biases the authors may have. One of the sources that have given me a lot of information and insight on the land issue in CHT is Rajkumari Chandra Roy's book "Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh." This is a comprehensive report that reflects upon the main challenges the Jumma have experienced through history with regards to land alienation.

I have also relied upon information collected by the Chittagong Hill Tracts Commission. This is an independent Commission that investigate allegations of human rights violations in the Hill region. A lot of the information I have collected from local indigenous researchers are confirmed in the subsequent reports from the Commission. This gives me reason to believe that the data I have collected from the local researchers is credible and objective.

Whereas cross-checking of information has been a useful method I have had some problems with finding data that look upon land alienation from the government's perspective. Such triangulation of information would maybe give me an even more balanced research. On the other hand, the policy of silence is a statement in itself and tells something about the governments stand on the land issue.

Both the primary and secondary data have been analysed using interpretative and comparative methods. The research have worked within a social constructionist framework, which maintain there is no one "right answer" out there waiting to be identified (Laws 2003: 273). There will always be different ways of seeing things and a range of interpretations that can be made. By using the social constructionist framework I needed to be aware of my own bias. A way of dealing with it was to step back at different stages of the research and look upon my research with different lenses. For the comparative analysis data from different sources have been compared and contrasted, in order to make the research more balanced.

1.6 Limitations

A limitation of the paper is my inability to speak the language of the Hill People in order to understand further their experiences, perceptions and problems with regard to their land and identity rights.

2. Collective Land Ownership: A Key to Survival of Indigenous Peoples' Identity

2.1 Introduction:

This chapter looks at some of the key concepts for making a stronger claim for collective land rights. It does so by explaining how the indigenous peoples look upon their collective land rights and how these are enshrined in their customary laws. Thereafter this chapter discusses how the process of development challenge these collective land rights put forward in their customary laws by displacing indigenous people and shutting down their access to land. This chapter also takes on board the discussion of collective versus individual rights, and illustrate how indigenous groups may use their group identity to claim collective land rights, or fight an individual struggle for the same cause. This chapter argues that a genuine respect for customary law combined with a reduction of the development-induced displacement makes a stronger argument for keeping collective land rights. In the opposite scenario a genuine disrespect may challenge the indigenous people's survival as a distinct people.

2.2 Collective Land Rights of Indigenous Groups

The Hill people look upon their land rights as a collective right within the framework of customary rights (R.C.K Roy 2000: 54). Ownership and possession are cumulative rights, and the land which is not under private ownership is considered to be common land, accessible to all members of the community.

What is significant in this context is the idea of shared usage of the land. Although individuals have exclusive rights to specific areas, such as the house, the community as a whole share the right to access and use the common land. Once a specific allotment is no longer in use or occupation by an individual, the land reverts back to the community. Thus, it is the community which owns the land, and the individuals are having specific rights of use, possession and title. This right is similar to the concept of property rights (R.C.K Roy 2000: 56).

Several studies show that indigenous people have a well-developed land allocation and land management system that relies on communal decision-making. In fact, almost all indigenous peoples hold their land collectively and exercise their territorial rights to their resources (Gray, in McDowell 1996: 106). Key principles such as not farming one swidden plot for too long, and maintaining evenly dispersed populations rather than concentrating settlements in one area has made a sustainable land allocation and management system for hundreds of years (Pedro Garcia Hierro 2004: 14).

In international law individual rights tends to get preference over collective rights⁷. This is also the case when domestic laws are being developed and implemented. Laws that protect collective usage of land normally are put forward in the indigenous peoples own customary law. To what extent such customary laws are being respected by the government varies across the world. What seems to be necessary thus is a need to secure the right to collective ownership of land in the common laws as well. Some successful examples of recognition of indigenous peoples collective land rights are given in the end of the chapter.

2.3 Customary Law –the Protector of Collective Land Rights

Indigenous land rights are conceptualized in a separate legal regime. Indigenous people consider themselves to be a distinct group with their own separate identity from the rest of the country. Rights and interests in land thus are regulated and administered by indigenous institutions according to customary law and include provisions for the control, use and management of the land and its resources (R.C.K Roy 2000: 54). These rules and regulations protect the indigenous peoples collective land rights to a larger extent than common law these laws are essentially developed by the indigenous peoples themselves. Ideally, this is how it works, but unfortunately these customs and practices are being violated by the authority in many countries.

There is growing international support regarding general principles on indigenous people's customary rights. Some of these principles have been developed in the context of deliberations of international human rights treaty bodies or regional human rights courts. Among the most important of these principles are those that stress the close attachment of indigenous people to their land (R.D Roy 2004: 169, Thornberry 2002, Gilbert 2006). These principles were first formulated in the ILO Convention 107 and further developed in the ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, and recently in the new United Nations Declaration of Indigenous Peoples (2007).

⁷ The ILO Convention (169) is an important exception. Chapter 2 of the Convention is of particular importance because it emphasis the need to recognise and respect collective land rights.

The ILO Convention 169 has dedicated a whole chapter to the issue of land. Article 13-19 gives specific rights in accordance with customary practices. In Article 13 it is stated that:

governments shall respect the special importance for the cultures and spiritual values of the peoples concerned or their relationship with the lands or territories, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

The protection of customary law thus implies a protection of their cultural and spiritual values as well as their relationship to land. This is important to appreciate, because one cannot speak about protection of collective land rights without at the same time talk about saving the culture and spiritual values of the indigenous people. In many cases these cultural and spiritual values are in direct link to their ancestral land (Gilbert 2006: xviii).

In the current situation where the Jumma as well as many other indigenous groups across the world are facing rapid integration or assimilation into modern majoritarian state systems, they will need to struggle hard to defend their basic rights, including their customary laws, to retain their cultural ethos as distinct peoples (R.D Roy 2004: 170). However, how this struggle will take shape depends on context, in particular historical, political and socio-economic context. One can choose the collective way, whereby the group stands united and reclaim their collective land rights based on customary law. Or it could happen in terms of individual struggles. In the case of the latter customary law and the importance of common property will not be as important.

2.4 Development-induced Displacement

The considerable impact of development projects on people's lives in terms of displacement from homes, jobs, and cultures has meant an increasing level of scrutiny over the past two decades from social movements and NGO's (Vandergeest et al 2007: 3). The outcome has been a growing number of battles around the world centred on specific projects, and a greater emphasis on the indirect displacement effects of development policies in general. What seems to be a common thread for all these development projects is the absence of local participation and influence in decision making (Vandergeest et al 2007: 10, Patwardhan 2000: 4). The top-down model of planning has severe consequences for the marginalized groups who don't have a voice, and in many cases these groups are indigenous. For indigenous peoples development-induced displacement is a serious threat because it shuts down their access to their ancestral land, thus weakening the opportunity to practice their collective land rights enshrined in their customary laws.

According to the World Bank, 4 million people are currently involuntary resettled as a result of development projects. Particularly problematic is resettlement as a result of the construction of dams. Each year between 1,2 and

2,1 million people are relocated involuntarily as a result of hydro-electric dam projects (Gray 1996: 99). Such development projects are often implemented based on an argument that nation-states have to develop, and that the benefits of the project should be positively weighed against the social and environmental costs. In other words, a project can be justifiable in terms of “the greater good” regardless of the consequences for the indigenous minorities affected.

The idea of collective ownership to the land also has consequences for the development-induced displacement. This collectivity to the land is bounded by a holistic view of the environment which links together economic resources, political control, historical contiguity and spiritual presence (Gray 1996: 107). Thus, when looking at the consequences, loss of land is just one out of many negative impacts on the indigenous peoples. In order to understand the resistance to such involuntary resettlement one need therefore to look at all these factors combined. Regardless of which stand one takes, there is no doubt that the conflict between indigenous peoples and those who desires development, i.e. the state, is a power struggle between the dominant and the subordinate. The state in such circumstances tends to be a homogenous entity working for “the greater good” whereas the indigenous minorities claim their rights to the land pre-date the formation of the nation.

2.5 Group Rights

Considering the strong notion of collective ownership to the land indigenous peoples have, the idea of group rights are strongly linked to the concept of collective land rights. Internationally there is little progress with regards to universal recognition of group rights, and there is a continuing exclusion of indigenous groups from political, economic, and social participation in many parts of the world (Cindy L. Holder 2002: 126). The international human rights system as we know it today has a clear preference towards individual rights, enshrined in major instruments such as the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966). However, there has been some improvement, the latest being the United Nations Declaration of Indigenous Peoples (2007), which up to this date is the most comprehensive statement of the rights of indigenous peoples.

2.5.1 The dynamics between collective and individual rights

Although collective rights are important for indigenous peoples it doesn't mean that individual rights are not equally important. Indigenous people generally recognize that collective and individual rights are mutually interactive rather than in competition (Cindy L. Holder 2002: 129). Having said that, there will always be questions about e.g. conditions of land tenure should be applied

to the group or should be reduced to individual holders. In case of a conflict of interest, whose rights should take precedence; the group or the individual? In some cases special protection may be necessary because of particular characteristics of the group that make it vulnerable in distinctive or unique ways (Sanders 1991: 384). E.g. the right to land tenure as a group may be vital for the cultural survival of the group. In such scenario, the group's right should rank before the individual's rights.

Another issue is the assumption that all members within the group have the same interests. The experience of many indigenous peoples demonstrates that it is often the insistence of oppressors in treating a collection of persons as a group that triggers the need for collective solutions and protective devices that can be wielded as a collectivity (Cindy L. Holder 2002: 136). On the other hand, a constant threat from oppressors might also erode the groups fight for collective solutions because in turn such actions will be acted upon by the oppressors. In other words, it will be a matter of saving yourself instead of thinking of what is in the best interest of the group.

In addition, emphasizing the individual members' identification opens the path for majoritarian groups to lodge claims for the retention of control over minority groups. Majoritarian groups can then block an oppressed minority's claim to rights by appealing to the importance of including such minorities in the dominant groups' collective goal of state-building or the development of national identity (Cindy L. Holder 2002: 136). In general indigenous groups are a minority within their respective countries. An argument based on the importance to include the minorities in the dominant group's collective goals is therefore a simple way of keeping control over the indigenous minority groups.

2.6 Successful Stories of Protecting Collective Land Rights

The beginning of this chapter argued that collective land rights are a key component in the customs and traditions of indigenous peoples, and thus an important element in defining their identity. However, as also discussed, their traditions are constantly being compromised and challenged by more powerful actors such as the State or development actors. Although the picture painted in this chapter is quite depressing, there is reason to be optimistic on behalf of the indigenous peoples across the globe. Several examples shows that it is possible to live in pace with the way the world is developing without compromising important elements of their identity, such as keeping their collective land rights Some positive examples of indigenous and non-indigenous groups successful struggle to keep their collective identity are elaborated below.

The world today is driven by capitalist forces whereby the right to own private property is highly valued and protected. This ownership is normally in terms of individual titles legalized through formal documents. Although this individualism is the driving force in the world today, some communities have managed to adapt to the capitalist way of thinking without losing their collective ownership to the land. In China there has been a massive industrialisation and urbanisation the last 30 years. Nevertheless, due to socialist legacy of collective ownership, rural land continues to be owned and managed by village collectives (Po 2008: 1603).

Legally speaking, China's land system allows for the conversion of agricultural land into urban uses only through the mechanism of state requisition, which compensates the farmers based on their annual agricultural output value. However, since the land is owned collectively, such compensation is given to the village collectives, not individuals (Po 2008: 1603)⁸. This might potentially cause major disputes because who represent the village community? In order to deal with the rigid system of land conversion, a land-based shareholding co-operative system has developed. In this new system the village is responsible for converting its collective land and assets into shares through a co-operative. This co-operative could then either rent out land or erect factory buildings and rent out the space (Po 2008: 1610). This creates more flexibility in the system, as well as clarifying the villagers' land property rights within the current framework of collective ownership.

In Latin America, Australia⁹, Canada, USA, and the Scandinavian countries various indigenous movements have managed to get legal constitutional ranking of their land rights. Countries such as Ecuador and Bolivia consider themselves to be multiethnic, and the legal subject of "indigenous people" can now be found in the constitution of the respective countries (Pedro Garcia Hierro 2004: 8). Across the Andean countries, with the exception of Bolivia, the various indigenous movements have managed to get legalized territories. To get legal recognition of a separate territory has proved to be a key to get acceptance of other demands such as territorial management and internal self-determination (Pedro Garcia Hierro 2004: 9). This implicitly means that they also get control over their land and thus can use their own laws and regulations based on their own customs.

In Cambodia in south-east Asia, they passed a new Land Law in 2001 that allowed for recognition of communal title for indigenous communities. In this

⁸ For more information on the collective land ownership and marketisation of land in China, read (Ho and Lin 2003, Pei 2002)

⁹ The *Mabo* case in Australia is an example of the High Court giving indigenous titles to land. However, these indigenous land rights were extremely limited. For further information, read (Short 2007, Australia High C 1993).

law, indigenous community land can be defined as residential land, agricultural land and land kept in reserve as part of the traditional rotational cultivation system (Pedro Garcia Hierro 2004: 14). The Land Law was a long process that listened to the wishes of the indigenous communities. They considered communal titles more in keeping with traditional land use, and thus communal titles would protect indigenous land and culture better.

These examples illustrates that the world is not black or white; it is possible for old and new traditions to co-exist. Acknowledging indigenous peoples collective land rights and identity as a distinct people does not need to undermine the identity of the nation per se. Rather it illustrates how acknowledging indigenous peoples as a distinct people may contribute to make a stronger claim for keeping their collective land rights.

2.7 Conclusion

This chapter have argued that collective land rights are a key component in the indigenous people's way of life. Therefore, to protect this right is absolutely essential in order for indigenous people to survive as a distinct people. Their collective land rights are enshrined in their own customs and traditions, and thus it is important to also respect their customary laws in order to make a stronger claim for collective land rights. However, these traditional rules and customs are constantly being challenged and compromised by external and often more powerful actors, such as the State or development agents. In addition, the international legal system as well as domestic laws tends to favour individual ownership to land instead of a collective ownership.

What seems necessary thus is a constitutional recognition of their collective land rights. In some countries such recognition exists, but there is still a long way to go before all indigenous people in the world are recognised as a distinct people with their own customs and traditions. This chapter have also illustrated with some examples how indigenous people can get recognition of their collective land rights without it being a threat to the nationstate per se. This shows that it is possible for indigenous customs and traditions to co-exist with more "modern" traditions which favour individual ownership to land.

This chapter have also shown the challenges development projects creates for indigenous groups worldwide. Building of dams and pipelines creates large number of internally displaced peoples who loose their access to their ancestral land, thus diminishing the chance of keeping their collective land rights. The key challenge in the future is to find a path where development projects and the survival of indigenous groups can co-exist.

3. Land Alienation and Resistance in the Colonial and Post-colonial Period (1860-present)

3.1 Introduction:

This chapter shows the ways in which government policies going back to the colonial period has systematically alienated the Jumma peoples from their land. Historical events form an important background in the analysis and interpretation of changes in a society (Rahman 1992: 26). Therefore, it is important to look at history in order to understand the situation in present CHT. This chapter shows that the land alienation has been a long process starting in the 1900 century that has affected the Jumma in different ways depending on who the rulers have been. Although there has been a clear unbalance of power between the Jumma and the successive governments this chapter illustrates how the Jumma have used their collective identity to re-claim their rights as a distinct people with their own customary laws. One case in particular is mentioned in this regard; the abduction of Kalpana Chakma – the leader of the Hill Women’s Federation.

3.2 State Policies Leading to Land Alienation

3.2.1 State policies during the British Colonial Period (1860-1947)

Fighting over land leading to land alienation has been a problem ever since the country was under British rule. The British declared about one-fourth of the land in CHT as reserve forest, with strict restrictions on the traditional shifting cultivation. (Thapa 2006: 445). The reason for doing this was an attempt to replace the slash and burn cultivation, which the British considered to be primitive and destructive, with more productive sedentary agriculture.

Another major intervention from the colonial power occurred in 1871, when almost all of the forest in the CHT was declared government property (Rasul 2005: 5). Immediately after taking over the administration of the CHT from the East India Company, the colonial government tried to increase the revenue from forest. By declaring almost all of the forest as government property, there was an opening to start commercial exploitation. Annual revenue from forest products thus increased substantially after 1871 (Rasul 2005: 5).

Although the colonial state declared nearly all land in the CHT government property, the indigenous people were given tenancy rights (Mohsin 2000: 69). This did not create any difficulties because according to the Jumma’s notion of land ownership, individuals and individual families cannot own land; they only have the right to use it. However, by making the area available for commercial exploitation the Hill people lost control over the land they used for their slash and burn cultivation. These actions were the first

denial of the Hill people's customary rights to use of the forest for securing their livelihood (Thapa 2006: 446).

3.2.2. State policies during the Pakistani period (1947-1970)

In the period under Pakistani rule (1948-1971) there was an intensification of resource use, alienating even more people from their land. A hydro-electric power plant was constructed between 1959 and 1963 in the Karnaphuli River in the Rangamati district. When the river was dammed, the reservoir it created occupied 256 square miles, and submerged 54000 acres of agricultural land. This amounted to nearly 40 per cent suitable for cultivation in the CHT. In addition to losing their farms and homes, the dam displaced more than 100000 indigenous people who were forced to evacuate (R.C.K Roy 2000: 96, Rahman 1992: 31, Levene 1999: 350, CHT Commission 1991: 13). This constituted nearly 25 per cent of the local population. Half of them migrated to India as refugees, and many are living in India as stateless persons today¹⁰. The rest were scattered around in the area as internally displaced without any proper rehabilitation. The building of the Kaptai Dam is considered to be one of the main reasons for development-induced displacement in recent history.

The attempt to resettle the internally displaced was handled poorly because of a number of reasons. First there was a general lack of understanding of the Jumma culture by the government of Pakistan and the donor agencies (USAID). They thought that they were "nomadic" people and it was unnecessary to design a permanent resettlement programme for them (IDMC, 2006: 28). Secondly there was simply not enough money to give proper compensation and rehabilitation to 100,000 people. The Hill people did not benefit vocationally from the construction either, as employment opportunities the project created were taken up by Bengalis (Mohsin 2003: 24).

However, alongside such negative aspects of government policies, the Pakistani government contributed to give education to some segments of the Jumma population. Between 1958 and 1968 a large number of primary schools and some high schools were established in the CHT. The Chakmas were mostly to benefit, and by 1970 the rate of literacy among them increased to more than 50 per cent (Rahman 1992: 32). As a result the political consciousness also developed, and soon political organisations emerged. In 1962 educated Chakma youths formed Pahari Chatra Samity (Hill Students Association), which had a Marxist political philosophy.

¹⁰ The refugees, who fled after the Kaptai Dam was build, were included in the repatriation programme in the Peace Accord of 1997.

3.2.3 State policies after independence (1971-present)

The government of Bangladesh (GOB) continued the policies imposed by the previous government in the name of development. One of the most significant interventions the GOB has done regarding alienation of land right of the Hill people is the migration policy implemented from 1980-1984. In this period about 400,000 Bengalis were settled in the CHT (R.C.K Roy 2000: 107, Mohsin 2003:30). The government's position during these years was that Bangladesh is an overpopulated country, and that there was plenty of empty land in the CHT the Bengali settlers could use¹¹ for more productive agriculture purposes than the slash and burn cultivation. However, the perception of empty land was highly overrated, because the area available for cultivated land is very limited. A soil and land use survey conducted in 1966 found that 73 per cent of the land of CHT is suitable only for forest, 15 per cent for horticulture, and only 3 per cent for terraced agriculture (Rasul et al. 2004: 221).

The settlement policy rendered another 100,000 indigenous Hill people homeless. About half of them became refugees in India, and the rest was scattered throughout the CHT. The Hill people have thus turned into international refugees as well as internally displaced (Mohsin 2003: 32). In addition to creating a huge flow of refugees the settlement program has changed the demographic composition quite dramatically¹². This is a concern for the Hill people, because it also changes the whole dynamic of politics and power in the area.

Not only did the demographic composition in the CHT change, the new settlers also created new conflicts in the area. There are two basic disagreements between the Jumma and the government with regards to disputes over land. Firstly, the government argue in favour of settlement based on the constitutional right to settle anywhere in the country. The Jumma on the other hand argue the 1900 Regulation still in force have strong restrictions on settlement of outsiders. Secondly, the government claims that the 400,000 settlers have been settled on khas land which is considered to be government owned property. This is essentially the same land as the hill people call jhum land or forest land, i.e. common land used for slash and burn cultivation and other communal purposes (CHT Commission 1994: 30).

¹¹ Today there are 96 persons per square mile in the CHT compared to the national average of 827 persons (D.Roy et al. 2000: 3). For further details, see table 1.

¹² In 1872 over 98% of the population in CHT was indigenous. In 1974 it has decreased to 73%, and in 1991 there were 51% indigenous peoples in the area. The demographic composition has thus changed dramatically after independence. (R.C.K Roy 2000: 113). For further details see table 2.

There is thus clearly a difference in the interpretation of concepts. To determine what common land is and what is government owned property is absolutely crucial in order to solve the land disputes. So far there seems to be a clear preference towards calling it government owned property and thus giving it to Bengali settlers¹³. There are no indications that the government are willing to take into consideration the Jummas concept of land rights, and therefore they are systematically violating the Jummas customary law.

3.3 Jumma Resistance

A groundswell of political activism had been developing in the CHT since the 1950s, and both the Pakistani and the Bangladeshi government has fuelled these tendencies through the creation of schools and technical colleges and in the extension of adult suffrage to the whole population (Levene 1999: 357). However, a constant exclusion of Jumma graduates from state office or employment, contributed to a strong mobilisation in various movements in the CHT, such as the CHT Student Association, the Hill Women's Federation, and the Rangamati Communist Party. Although these movements were largely limited to student or professional circles, they were indicative of a social and cultural shift in the CHT (Levene 1999: 357). Traditionally it was the chiefs who provided the interface between the state and the Jumma people, but after the political awareness developed, the various organisations took over the representation task. In other words, the voices of the Jumma came to be known through these movements rather than through the chief's voices.

The creation of Bangladesh was a particularly traumatic experience for the Hill people. Not only did the constitution neglect their status as a distinct people, but they were also still reeling from the economic impact of the Kaptai flooding. In addition many of the Jumma were accused of siding with the enemy Pakistan in the liberation war. It is in this context the Hill people's political party JSS was established under the leadership of Manobendra Narayan Larma (CHT Commission 1991: 15). A military wing of the JSS, the Shanti Bahini, was also formed in the mid 70's to fight the Bangladesh authorities for autonomy. This was because the authorities started militarizing the CHT to suppress the political aspiration of the Jumma people after independence (Bhikkhu 2005: 25).

To establish a political Jumma party was a way to unite the Jumma in their struggle against the Bangladeshi government, and thus, an effective mean to communicate their opinions. By creating a collective identity as one "Jumma people" they also gave a signal of unity, emphasising the importance of

¹³ Bengali plainspeople are still today settled on land the government claims to be *kebas* land.

regaining the influence of customary laws that had systematically been neglected by successive governments. However, by establishing a military wing as well, the JSS gave the government a cheap excuse to keep a strong military presence in the CHT. Although “Shanti Bahini” literally means “Peace Force”, insurgency emerged in the CHT, provoking the government to increase the military presence in the area. The insurgency also gave incentive to President Zia to sponsor Bengali settlers into CHT, providing land grants, cash and rations (CHT Commission 1991: 15).

3.3.1 The case of Kalpana Chakma

Systematic and pervasive military presence in the CHT had heightened awareness among Pahari (Hill) women of their rights (Guhathakurta 2001: 277-84). This awareness can effectively be illustrated through one case; the abduction of Kalpana Chakma. She was Organising Secretary of the Hill Women’s Federation, and a prominent figure in the Jumma resistance fight. Her struggle for Jumma autonomy and self-determination soon became a threat to the authority, which responded by abducting her from her home in Rangamati district on the nights of 11th June 1996, just hours before the parliamentary elections (CHT Commission 1997, 2000, Guhathakurta 2004)¹⁴.

In her diary, which was recovered from her home by journalists after her disappearance, her writings confirm her determination to fight a dual struggle against political-military and male oppression in the CHT. She writes:

On the one hand, the woman faces the steam roller of rape, torture, sexual harassment, humiliation and conditions of helplessness inflicted by the military and Bengalis, on the other hand she faces the curse of social and sexual discrimination and a restricted lifestyle [...] despite the fact that women constitute half of the population, they are not taken seriously in any movement for social change

Although many Jumma women were abducted, raped and killed during the fights against the government, Kalpana Chakma became the face of the faceless, and her abduction triggered massive demonstrations across the country. Also, her struggle made Jumma women realize that they needed to participate in the resistance movement, because it was the only way to ensure their dignity and existence both physical and cultural (D. Roy et al. 2000: 85). Since the kidnapping nothing has been heard from Kalpana Chakma and her

¹⁴ The Working Group on Enforced or Involuntary Disappearances reported in 2005 the disappearance of Kalpana Chakma as an outstanding case not yet resolved. The government had previously informed the Working Group that neighbours and relatives had denied that she had been abducted by armed forces. However, this information was proven not to be correct when the Working group talked to Kalpana’s relatives. For further information, see: E/CN.4/2006/56. 27 December 2005

whereabouts is still unknown. Rumours spread out by the military claimed that Kalpana had a love affair to a military officer, and that she and Lt. Ferdous had eloped (CHT Commission 1997: 12). These rumours were quickly rejected by her relatives.

3.4 Conclusion

In this chapter I have shown the systematic process of land alienation in the CHT. The process dates all the way back to colonial time when the British ruled. Although the 1900 Regulation allowed for the CHT to be an autonomous district under British rule, the goal for the British Empire was to exclude the CHT from the rest of Bengal (Levene 1999:349). Thus, the notion of a special autonomous status was based on false premises as the British only acted in purely self-interest.

Acting in “the best interest of the State” has been a policy followed under subsequent governments. Unfortunately this has never favoured the Jumma people in the CHT. Rather, it has undermined the Jumma people’s status as a distinct people with their own customs and traditions. Policies in the name of development, such as building of the Kaptai Dam, resettle Bengali landless plainspeople, and attempts to exploit the forest for commercial purposes has certainly been in the best interest of the State without much concern being raised with regards to the consequences of the Jumma people affected.

The outcome of the various policies has been an even more marginalized Jumma population, displaced from their land, leading to increased poverty and a loss of their cultural identity as Jumma peoples. What seems to be clear is that none of the policies implemented in the best interest of the State has favoured the Jumma people’s customs and regulations, thus diminishing the importance of their collective land rights.

Although the Jumma have struggled for their rights against subsequent governments through creating a collective identity, so far there has been little advance in terms of protecting their collective rights. That being said, there is hope for a better future, starting with a cease-fire between the JSS and the government of Bangladesh in 1997. This Peace Accord and its outcome are discussed in the next chapter.

Chapter 4: Promises not Kept: The Peace Accord of 1997

4.1 Introduction:

This chapter focus on the Peace Accord signed in 1997 between the JSS and the government of Bangladesh. Considering land being the one single most important reason for conflict in the first place, the chapter analyses whether the peace agreement makes a stronger claim for collective land rights for the Jumma or not. Other related issues to the land issue are the right to self-determination and the demand for an autonomous region administered by the Jumma peoples. If these demands are met it makes it easier for the Jumma to protect their collective land rights because implicitly these demands give more authority and power in the hands of the Jumma.

4.2 Background:

After a 25-year long civil war the Government of Bangladesh and the Chittagong Hill Tracts People's United Party –PCJSS, (JSS for short), signed a Peace Accord in December 1997. This was a major breakthrough that gave hope for lasting peace in the area. However, at least three smaller political groups in the Chittagong Hill Tracts, namely the Hill Students Council, the Hill Peoples Council and the Hill Women Federation challenged the right of the PCJSS to be the sole representative of the tribal people and sign the accord on their behalf (AI, 2000: 6).

Although there was pressure from international donors and human rights organisations to end the civil war, the final agreement was signed without any help from an external third party. This was considered quite unique according to international standards, and showed the willingness on both sides to end the bloodshed that had caused hundreds of thousands death, created huge flows of refugees, and made the CHT one of the most highly militarized zones in the world.

Although the agreement was finalized without any help from the outside, there is no doubt that pressure from neighbouring country India contributed to signing the accord. Over the years a lot of Jumma refugees had fled to Tripura state in India, and the refugee problem had become a dominant issue in relations between Bangladesh and India. By stopping food supplies to the refugees who were forced to survive on salt and rice alone, and finally asking the refugees to leave, the Indian government put a lot of pressure on JSS to sign the Accord (Mohsin 2003: 42).

In the past the JSS held negotiations with successive governments at different times: first with the Ershad government between 1985 and then with the BNP government of Khaleda Zia between 1992 and 1994. All earlier

negotiations broke down, but the JSS finally succeeded in making an agreement with the ruling party the Awami League, in 1997 (CHT Commission 2000: 12).

Some of the demands put forward by the JSS entering the negotiations, that had relevance to the issue of collective land rights and self-determination were:

1. Regional autonomy for the Chittagong Hill Tracts as one administrative and political unit named *Jummaland*.
2. Constitutional recognition of their separate identity as Jumma peoples
3. Removal of the settlers from the CHT and restoration of land to the original owners
4. Repatriation and proper rehabilitation of the refugees from India.

4.3 Collective Land Rights –Protected or Neglected?

Land was regarded as the crux of the problem in the CHT, and control over the land and its natural resources is considered vital to retain the Jumma people's autonomy (Mohsin 2003: 44). One of the key issues in the Accord was that all the Bengali settlers who came to the area in the late 70's and early 80's on a government sponsored programme, should be resettled elsewhere, and the land be given back to the original owners; the Jumma. However, the implementation of the Accord has been a very slow process, and the land issue is still one of the problems not resolved.

Removal of the settlers from the CHT and restoration of land to the original owners was maybe one of the most important elements of the Accord with the most confusion around it. According to JSS it was agreed verbally during the negotiations that the settlers who came to the area through government-sponsored settlement programme would be resettled outside the CHT. In the late 70's and early 80's around 400.000 landless Bengalis were settled in the CHT (Mohsin 2003: 30). Needless to say, this created tensions in the region, because a lot of the Jumma population lost their jhum land used for slash and burn cultivation essential for their livelihood. Whilst the JSS claim there was a verbal agreement that these settlers should resettle outside CHT, the government refused to put this in writing, and openly denied that any such agreement existed (CHT Commission 2000: 20). Although a verbal agreement is just as legally binding as a written agreement, there is no doubt that in a situation like this the strongest party win. Thus, if the government says such agreement never existed, it didn't.

A paradox though is that a lot of Bengali settlers in the area openly have expressed their willingness to settle elsewhere if they were given the opportunity for a proper livelihood. This requires money, and the European

Union has on several occasions offered to provide financial assistance for programmes to resettle Bengalis back in the plains (CHT Commission 2000: 20). So far the government of Bangladesh has refused to accept any such financial support. This indicates a lack of political will to develop and implement a resettlement policy for the Bengali settlers outside the CHT. Of course there is a huge challenge to find land in the plains for 400000 people, but as far as the Jumma are concerned it is absolutely crucial to have them removed in order to restore the land to its original owners.

4.3.1 The difficulties to prove Jumma land ownership

To remove the Bengali settlers and restore the land to the “rightful” owners was a huge challenge, because in many cases it was difficult for the Jumma to prove ownership to the land, the only clear “evidence” being the fact that they have used the land for hundreds of years, pre-date the formation of the nation. Due to their perception of collective land rights very few of them have any papers confirming that they are entitled to use the land. This causes several problems. First of all, a large part of the hilly land in the CHT is used as jhum land for shifting cultivation, and this is considered common property with no individual land titles. With no written documents that proved you are entitled to use the land, it was difficult to actually claim the right to use that land. Secondly, the jhum land is also the same land the government think of as government owned property (khas land). When solving land disputes, therefore it became a question of whose laws should count; the Jumma customary law or codified land laws. In addition it was a question of politics, considering the strong interest of the government to keep large portions of Bengali settlers in the area.

Under such circumstance there is no doubt that there were conflicts between the government and the Jumma with regards to who was the rightful user or owner of the land. The government had given land documents to the Bengali settlers who had settled in the area, thereby giving them a legal right to own and use the land (IDMC 2006)¹⁵. By doing this they also send out a signal of preference towards individual land titles. In other words, the state gave preference to codified land laws, thereby neglecting the customary laws of the Jumma.

Another problem was the misconception of the Jumma as a nomadic people. The Bangladeshi authorities have described the Jumma as “nomadic tribespeople” who are constantly on the move (R.C.K Roy 2000: 52, IDMC 2006: 28). The root of this misinterpretation lies in the tradition of shifting

¹⁵ [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/115425870A67D393C12571390046713E?OpenDocument#6.7.1](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/115425870A67D393C12571390046713E?OpenDocument#6.7.1)

cultivation, whereby the Jumma families move from one plot to another to practice their jhum cultivation according to sustainable land use and soil conservation. However, the Jumma families always have a permanent home-base in the village, and their practice of non-settled economic activities in no way diminishes the rights of the Jumma to their traditional lands. In addition such economic activities are in strict conformity with indigenous customs and usages (R.C.K Roy 2000: 53).

4.3.2 Communal vs. government owned property

The conflict between government owned property and communal property has been discussed in the Peace Accord, and a solution to the problem is found in one of the clause of the Accord. There it is stated that no lands under the jurisdiction of the Hill District Councils, including khas land, can be leased out, purchased, sold or transferred without prior permission of the HDC concerned (R.C.K Roy 2000: 167). Implicitly this means that customary law is ranked above official land laws. However, considering the very limited jurisdiction over land the HDC have¹⁶, the customary law only applies in a small number of cases. On top of that, many settlers have illegally obtained land documents showing they are the “rightful” owners of the khas land, and many Jumma have lost their land documents when fleeing from attacks from settlers and security forces. Although the Accord strengthens the power and authority of the HDC’s it seems evident that authority over land administration should be transferred to the Councils with immediate and substantive effect.

As long as the Bengali settlers are still living in the land previously owned by the Jumma people there is little reason to believe that the Hill people’s collective land rights will be respected. If a legal document showing ownership to the land is a precondition for usage, implicitly this means that common law has preference over customary law. Thus, a claim to get back their land for common usage will be neglected. As long as the Peace Accord is not giving the Jumma people stronger remedies to get back their land for common purposes, “policy as usual” will continue. In other words, the Peace Accord is not making it any easier for the Jumma to regain their land, thus their collective land rights has been weakened as a result of the peace agreement.

The only positive sign of political willingness to solve the land problem enshrined in the Accord was the establishment of a Land Commission. This Commission should take care of land disputes in the area. The Commission is open to both the indigenous people and non-indigenous settlers to lodge

¹⁶ Only 10 per cent of the arable land falls under this clause, whereas the land excluded from the Accord, such as the Kaptai Hydro-Electric Project and the unclassified State and reserved forests, and land illegally occupied by the government-sponsored Bengali settlers comprise the other 90 per cent (R.C.K Roy 2000:167, CHT Commission 2000: 23, Mohsin 2003: 50).

complaints before it (R.C.K Roy 2000: 171, AI 2000: 7, CHT Commission 2000: 22, Pereira 2005: 299). Considering the majority of the members in the Commission is indigenous, it gives hope to believe that their knowledge and experience will be at the benefit of the Jumma people. However, there is no guarantee that ownership rights based upon customary laws will be treated equally with those based upon registered title (R.C.K Roy 2000: 171).

So far the Land Commission has not yet started to work effectively, and there is also a growing concern for the arbitrary powers of the chairman of the Commission. The concerned law has given almost unfettered power to the chairman –a retired judge of the High Court -to overrule opinions of the other members¹⁷ of the commission where there is no consensus (R.D Roy 2002: 6).

4.4 Realizing the Right to Self-determination

Two of the demands put forward by the JSS in the peace negotiations are of particular importance with regards to the right to self-determination. Regional autonomy for the CHT and constitutional recognition of their separate identity as Jumma peoples is inextricably linked to the issue of self-determination because these demands says something about how the Jumma wants to develop and define themselves. To get approval of these two demands would therefore also be important with regards to getting recognition of their collective land rights.

The demand for constitutional recognition of their separate identity as Jumma peoples was rejected by the government, arguing that if the Jumma were given such recognition, so would all the other ethnic minorities in Bangladesh. However, to give constitutional recognition of their identity does not mean to get recognition *and* make a separate state. It is simply a sign of showing that there are several ethnic groups in the country, and they are all equally important. Successive governments in Bangladesh have remained uncompromising on the issue, maintaining the common stand that there can only be one nation and one state, and that is Bangladesh.

Giving the CHT back its special status as an autonomous region they inhabited during colonial rule was thus never an option for the government of Bangladesh. But admitting that the area was a “tribal” inhabited area was a small recognition of the fact that there are other ethnic groups in the country than Bengalis. On the other hand, the term “tribal” indicates an unequal power

¹⁷ Apart from the chairman, the other members of the commission include the chairman of the CHT Regional Council, the chairmen of the three district councils, the three chiefs or *rijas*, and the Commissioner of the Chittagong administrative division (a civil servant).

balance between two groups. To recognize the CHT as “tribal” inhabited region was implying a subordinate status to the Jumma within the Bengali nationstate (Mohsin 2003: 45, CHT Commission 2000: 19).

Thus there is reason to think that one of the parties, i.e. the Bengali, have gained more from the Peace Accord than the Jumma. The Jummas recognition as a distinct indigenous group was ignored, and therefore their customs and laws could not be recognized either. In short, the Accord showed that the government was willing to give something in terms of acknowledging that there existed other groups of people than Bengalis, without it having any consequences for their policies and actions in the area.

4.4.1 The Regional Council and its limitations

The Accord said there should be established a Regional Council (RC) consisting of 22 members¹⁸. The Jumma should have the majority of seats, and seven seats were reserved Bengali settlers living in the area. The JSS demanded a Regional Council with legislative and administrative powers. If these demands were fulfilled, it would restore some of the control over the area to the Jumma, thus contributing to fulfil the right to self-determination. In addition the JSS wanted further devolution of powers to the Hill District Councils, including over land, police, tourism and secondary education (R.D Roy 2002: 6). This in turn would enhance the chances of respect for their own customs and usages and make the claim to self-determination stronger. In other words, their collective land rights and perception of communal owned property would be strengthened.

A number of measures related to rehabilitation and devolution of authority to the existing and new units of self-government have been taken, but authority over police, law and order, strengthening of the role of the 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 (R.D Roy 2002: 6). The final Regional Council put forward in the Accord only had the powers to co-ordinate and supervise the three elected Hill District Councils. These supervisory and coordinating powers would not give real teeth to the Regional Council; it could only bring about some cosmetic changes in the administrative structure of the CHT by allowing a larger role of indigenous people in the administration (Chaudhury 2003: 117). Moreover,

¹⁸ Two thirds of the Regional Council members (12 male, 2 female) will be elected amongst the tribal population with a special quota for each tribe. One third of Regional Council members (6 male, 1 female) will be elected from the nontribal population of the Chittagong Hill Tracts with members of each of the three Hill District Councils electing two male members of the Regional Council. There are no geographical conditions attached to the election of the non-tribal female member (AI 2000: 6-7).

none of the Councils Acts are secured in the constitution, which means that any government can repeal these Acts at any time (CHT Commission 2000: 16). In other words, the Regional Council and its mandate are dependent on the ruling government at any time, and could easily be removed if the government wish to do so. Clearly then, the Regional Council put forward in the Accord has only a symbolic power.

Another reason of concern was the actual composition of the RC. The way in which the seats were divided could cause internal instability within the Jumma population. The largest indigenous group, the Chakma, occupied almost 50 per cent of the seats in the RC, thus establishing the hegemony of the Chakma (Mohsin 2003: 53). The six smallest indigenous groups were only left with one seat to share. Potentially this could harm the fight for collective land rights, because the different groups were more interested in protecting their own interests than working for what was best for the community as a whole. Thus, the perception of group rights may be dropped to the benefit of individual rights. On the other hand, you might argue it was only fair that the Chakma group got 50 per cent of the seats because they constituted 50 per cent of the population. Nevertheless, giving more space to the smaller indigenous groups would strengthen the Jumma as a group because it would give a signal that all groups are equally important in the peace process and in a potential Jummaland.

When the Regional Council was established, there was an unwritten clause in the Accord saying the JSS should nominate all 22 members of the RC. Accordingly the JSS had submitted a list to the government with the names of the members to be appointed. However, the government replaced the three Bengali members with their own candidates, all member of the ruling party Awami League. This might be an indication of the political will, or lack thereof, to commit to the Accord and make sure it is being implemented properly. Another threatening sign was the fact that the Regional Council was hardly able to function due to non-disbursement of funds by the government (CHT Commission 2000: 18).

4.5 The Jummas in Dissolution

Another reason of concern was the division among the Jumma population in the aftermath of the Peace Accord. Not long after the Accord was signed one faction of the activists supported the JSS and the Peace Accord, the other declared that the Accord was inadequate and that they would continue the struggle for “full autonomy” (CHT Commission 2000: 30, Mohsin 2003: 62). As a result of this division, the activist who declared a continuance of the struggle for “full autonomy” launched a new political party, the United Peoples’ Democratic Front (UPDF). The stated aims of the party are:

To ensure existence of all nationalities in the CHT through the establishment of full autonomy, and to establish a democratic society free from oppression and exploitation. (CHT Commission 2000: 31)

Also other political groups in the CHT felt that the Accord had failed to respond to their aspiration of full autonomy. These include *Pahari Gano Parishad* (PGP or Hill Peoples Council), *Pahari Chattra Parishad* (PCP or Hill Students Council) and Hill Women Federation (HWF) who argued that the accord has failed to “*reflect the genuine hopes and aspirations of the peoples of the Chitragong Hill Tracts*” (AI 2000: 9).

In addition to creating a good reason for the military to keep their strong presence in the region, the division within the Jumma population has caused serious in-fights between the JSS supporters and the supporters of UDFP. Thus, instead of making a strong united group struggling for collective rights, the Peace Accord has created division within the Jumma population. Whether this has been a deliberate policy on the behalf of the government is difficult to say. But the Peace Accord certainly has created more instability in the region. Some Jumma insiders have indicated that the military intelligence is taking advantage of the conflict by getting activists of both sides killed and accusing either the JSS or the UDFP for it (CHT Commission 2000:37). If so, it does not give high hopes for sustainable peace in the future

4.6 Conclusion:

Despite the Peace Accord, the Jumma continue to be excluded from political empowerment in the real sense of the term, and excluded from development opportunities (Bhikkhu 2005: 35). The peace agreement could have been the starting point of peace and prosperity in the CHT. Instead, it created more tensions and more disappointments in terms of promises not kept.

Removal of Bengali settlers and restoration of land to the rightful owners, and the demand for regional autonomy, were two of the demands absolutely crucial to fulfil in order to hope for lasting peace. None of these demands were met by the government, thus crushing any hope that was left for actual respect for the Jumma people’s rights.

These demands combined would make a stronger case for collective rights for the Jumma. Instead, the Peace Accord has undermined the rights of the Jumma population. Under such circumstances there is no reason to say the Peace Accord has protected the Jumma’s collective land rights, rather it has created more instability in the region leading to even more land alienation. Thus, what could have been the start of peace and stability in the region has only made the conflict escalating instead.

In addition, the fight is no longer between the Jumma and the government. Now, there are tensions within the Jumma population as well, and this might potentially hurt the struggle for obtaining collective land rights.

Chapter 5 Refugees of the Chittagong Hill Tracts – Related to Land Rights

5.1 Introduction

This chapter looks at the refugee situation in the CHT. The causes and consequences of the large number of refugees in the region have had a major impact on the land distribution and land ownership. Using the Peace Accord as a starting point the chapter discusses to what extent the process of repatriation and rehabilitation of refugees has contributed to a de-alienation of land of the Jumma. The chapter starts with a brief overview of the refugee situation in the CHT, and then moves on to discuss the refugee rights enshrined in international law. Finally it looks at the refugee issue in the context of the CHT.

5.2 Overview of the Situation in the CHT

The Peace Accord signed in 1997 enabled the refugees to be repatriated, but thousands of IDP's and returning refugees remain displaced due to unresolved issues related to land and property restitution. The Peace Accord includes mechanisms to address internal displacement, but a Task Force to rehabilitate the displaced and a land commission to settle land disputes have never functioned effectively. The core issues of contention revolve around land ownership and disagreement about whether Bengali settlers should be counted as IDPs. No recent estimates of the number of IDPs are available. Existing figures from 2000 vary between 60,000 (Amnesty International) and 500,000 (Government Task Force).

The implementation of the Accord has been a very slow process, and violent incidents still occur frequently in the CHT causing further displacements of civilians (IDMC, 2006: 7). Clashes between fractions of the Jummas who support or contest the Accord as well as sporadic attacks by Bengali settlers or anti-terrorist military operations makes the situation even more insecure for the people living in the area. Today there is no national strategy to deal with the needs of the internally displaced peoples. The UN Guiding Principles on International Displacement are an essential tool to improve the situation of the IDP's in the Hill Tracts, and should therefore be incorporated into national law and legislation.

5.3 Refugee Rights

5.3.1 Who is a refugee?

The treaty governing the reception and treatment of refugees is the UN Convention Relating to the Status of Refugees (1951) and its Protocol (1967). The creation of the Convention has its origin in the aftermath of Second World War, when numerous Europeans were scattered around in Europe (Goodwin-Gill, 1996: 18). Article 1 says the Convention should apply to:

Persons who have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or Owing to such fear, is unwilling to avail himself of the protection of that country.

To define refugee status is important because it lays certain obligation on states. However, it is important to appreciate that international law only identifies the required goals and standards, and it is up to each state to decide how to fulfil their obligations.

5.3.2. The policies of refugee rights

States are the primary duty bearer to protect refugees, and when becoming state party to international treaties such as the Refugee Convention; it accepts legal obligations to make sure it has the legal means –whether legislative or administrative –to implement it (Goodwin-Gill 2007: 20). In a process of implementing treaties political will or lack thereof, is essential with regards to the outcome of ratification. In other words, to make a treaty effective, there is a need for political will on the behalf of state parties. Otherwise the state signature to a treaty only has symbolic meaning.

The policies of dealing with refugees have changed over the years from being a question about resettlement to an issue about voluntary or forced repatriation, and then again the focus shifted to safe vs. involuntary return (Chimni 2004). Lately the question of imposed or involuntary return has been on the agenda, especially in developing countries. Imposed return has become necessary because of pressure from host states and a lack of money to care for refugees (Chimni 2004: 66). The Refugee Convention lays certain obligations on hosting states, which can be a heavy burden. As the principle of non-discrimination is one of the cardinal principles in the Convention, this implies that the refugees should be treated the same way as the nationals. They therefore should have the right to access health care, education, employment etc on the same basis as nationals¹⁹. In a country where the state can hardly

¹⁹ For further details, see Chapter 3 and 4 in the Convention.

provide these services to their own nationals it is unreasonable to think they can take care of the refugees as well. In such a situation there seems to be a need for burden sharing. The unwillingness of the North to share the burden of the poor host states at the level of resources has meant that the refugees must either repatriate or become the sole responsibility of the host state (Chimni 2004: 66).

In such situation there is no doubt that the easiest option is (in)voluntary return to the country of origin. However, the country of origin is very often in no position to take care of returning refugees. In many cases, the government is the reason for creating refugees in the first place. For indigenous peoples who have fled due to civil war or because they have lost their land due to land grabbing from the government, it is little reason to think that such refugees will get any help from the very same government once returning. In such situations the outcome might be internally displacement instead. This makes the refugees even more vulnerable because there is no mandate for protection of IDP's in international law. The way in which conflicts are developing in the world today the number of IDP's is much bigger than the number of refugees. There should thus be a greater focus on protecting IDP's in the contemporary world.

5.4 Repatriation of Jumma Refugees

Over the years the insurrection in the CHT between the military wing of JSS, the Shanti Bahini, and the Bangladesh security forces have caused a huge flow of refugees fleeing to neighbouring state Tripura in India, as well as displacing thousands of hill people within the region. The process of repatriating these refugees started well ahead of the signing of the Peace Accord in 1997. Nevertheless the refugee issue was an important part of the Accord because it ensured that the refugees would get their land and property back once returning. Thus, the issue of settlers is inextricably linked to the question of proper rehabilitation of the refugees and internally displaced, since the former in many instances have been settled on land once belonging to these refugees (Mohsin 2003: 72).

5.4.1 Repatriation pre-Accord

In 1992 the government of India demanded the state of Tripura to start repatriating Jumma refugees to the CHT. To make the demand more efficient the government put heavy restrictions on the food rations only giving the refugees rice and salt. This would eventually make the refugees repatriate “voluntarily” back to the CHT. Even though the refugees were starving due to the restrictions on food supplies they refused to return to Bangladesh as no security of life and property was guaranteed (CHT Commission 1994: 14). Such restrictions in food supply is also violating the principle of non-discrimination enshrined in the Refugee Convention and should therefore not occur. As a response to the Indian government, the Jumma refugees made a

list of demands in order to repatriate. The main demand was to have a guarantee of security of life and property, and a proper compensation to the refugees for the loss of life and property caused by the attack of Security Forces and settlers.

Without any guarantees these demands would be met the authorities of India and Bangladesh agreed to start repatriating the refugees from June 1993 (CHT Commission 1994: 15). The government of Bangladesh did however promise to restore land belonging to returnees to them and not resettle them in cluster villages. In theory this would be a good first step on the way to proper rehabilitation, but there was no guarantee of safety in the offer from the government. To get back your land only help so much as long as there is no guarantees that land will no be occupied by settlers the minute you return. A guarantee for their safety thus should be at the core of the promises given to the returning refugees. This is an unquestionable request, as the government of Bangladesh are obliged to protect returning refugees according to the Refugee Convention.

After several rounds of talks and inspections in the CHT 379 families, a total of 1818 refugees returned to the area in February 1994 (CHT Commission 1997: 18). This was done despite a number of delegations²⁰ visiting the area strongly recommended not to repatriate the refugees because it was unsafe for them to return. During the days of repatriation the process was monitored by a number of journalists from national and international media, which had been invited by the government of Bangladesh. The government itself hailed the repatriation as a diplomatic success between the two neighbouring countries, and emphasized the good working relation between the nations. Looking at the small number of refugees returning, one can hardly call it a diplomatic success.

Although government officials and the media claimed that all the returnees had been resettled on their own lands successfully, the Jumma refugees themselves told a different story. Some of them did get their land back and started constructing new houses, but others were left staying with their families or temporary shelters because their land was still occupied by settlers or security forces (CHT Commission 1994: 18). As a consequence a large number of repatriated refugees became internally displaced. Moving from a status as an international refugee to a status as IDP is not to the benefit of the refugees considering the lack of protection through international law. Thus, the whole repatriation programme made the conditions even worse for many Jumma refugees, as well as proving that the Bangladeshi government did not respect the Refugee Convention.

²⁰ The South Asia Human Rights Documentation Centre, and a delegation of Indian government officials and members of the Jumma Refugees Welfare Association visited the area in between the agreement in 1993 and feb.1994.

5.4.2 Challenges of repatriation

There could be many reasons for the failure to return the land to the Jumma's. One of the main reasons I believe is the problem of proving ownership to the land you claim to be repatriated on. Without any documents showing you own the land it is difficult for the settlers to accept such repatriation. In this regards the customary laws ensuring collective ownership to the land is not in favour of the returning Jumma. If the Jumma had valid land documents showing they owned that specific piece of land it might have had a different outcome. In other words, in a situation of repatriation individual land titles would be easier to accept for Bengali settlers, thus making it easier to give back the land to its rightful owners.

Another reason for the unsuccessful repatriation is the lack of political will on behalf of the government. International law lays obligations on the state to protect and rehabilitate refugees, but as long as the violation of these refugee rights continues with impunity there is no reason to believe that the Jumma refugee will be repatriated safely on the land they own. In other words, the empty promises on paper have no value for the Jumma as long as impunity is the preferred policy.

5.4.3 Repatriation post-Accord

Following the peace agreement repatriation again started, and in February 1998 the last group of refugees returned to CHT. Officially, 12222 families, or 64609 people were repatriated. In addition to this another 20000 refugees who were not officially registered as refugees returned from Tripura, as well as some 5000 unregistered refugees from the Indian state Mizoram (CHT Commission 2000: 44). The agreement to repatriate the remainder of the approximately 70000 refugees was reached between the government and the Jumma Refugees Welfare Association (JRWA) some months before the Accord was signed, and is referred to in the Accord as the 20-point Agreement (R.C.K Roy 2000: 173)²¹. This time the Jumma were provided a guarantee of safety over their lives and properties, each family would be provided with 15000 taka²² and permits to build houses, and land under the ownership of repatriated refugees would be handed over to the respective owners (CHT Commission 2000: 44).

The 20-point Agreement is a more comprehensive document ensuring that the rights of the refugees are being protected and fulfilled than the previous agreement in 1993 between the authorities of India and Bangladesh. The fact that the 20-point Agreement is between the JRWA and the GOB is in itself a

²¹ See section (*Gha*) *Rehabilitation, general amnesty and other issues* in the Peace Accord for further details on the 20-point Agreement (in appendix 2)

²² Taka is the national currency in Bangladesh

positive sign, because it shows a political will to include the Jummas themselves in the process. Nevertheless, there are major weaknesses in the 20-point Agreement. One of the issues not dealt with is the internally displaced. None of the promises made to the registered international refugees applies to the IDP's. This substantially large group is therefore even more vulnerable than the registered refugees.

5.5 Rehabilitation of Refugees

The agreement to repatriate and rehabilitate international refugees put forward in the Accord provided for the return of government jobs, financial assistance and food aid, and the return of dispossessed land. A large number of refugees have regained their land through peaceful and legal means, but still there are a substantial number of refugees that have not regained their land which is now occupied by Bengali settlers (R.C.K Roy 2000: 174).

The Returnee Jumma Refugee's Welfare Association (RJRWA) claims 80 per cent of the refugees did not get back their land, orchards or homesteads while official statistics say this was the case for only 25 per cents (Daily Star, 23 October 2003). Furthermore, according to the RJRWA, 40 villages, all in Khagrachari District, are still illegally occupied by settlers. An issue of contention is also the fact that settlers have built markets on land claimed by repatriated tribal families (IDMC 2006: 11).

According to government sources, the total allocation for rehabilitation of the repatriated Jumma refugees was Tk. 370 million. Around 12000 families received cash to build new houses, and at least 70 refugees out of 170 eligible were reinstated in their jobs (CHT Commission 2000: 45). However, there are no official figures for the number of repatriated families who regained their land. According to the JRWA president Upendra Lal Chakma the homesteads of 1339 families, the chards and plantations of 774 families and the wet-rice fields of another 942 families had not been returned to their original owners (R.C.K Roy 2000: 174).

Needless to say, there were a lot of conflicts over land once the refugees returned. In the Peace Accord it says the Land Commission would deal solely with land disputes. But implementation of the Accord is very slow, and the Land Commission did not have any meeting before 8th of June 2005, six years after it was constituted (ACHR, 2005)²³. There could be a number of bureaucratic and practical reasons why the Land Commission did not start its work until 2005. However there is reason to think that part of the slow

²³ www.achrweb.org/Review/2005/77-05.htm

implementation is due to discrimination and lack of political will to ensure the restitution of the Jummas lands and homesteads. As Rupayan Dewan reported to the UN “*nothing of substance has been done to either provide financial assistance to them, or to rehabilitate them in their original homes and lands*” (R.C.K Roy 2000: 174)

5.6 The Internally Displaced Persons (IDP’s)

Estimates over the number of internally displaced persons in the Chittagong Hill Tracts vary between 60,000 (AI, 2000) and 500,000 (Government task force, 2000). The compilation of a list of IDPs became one of the most controversial issues in the post-conflict years, and is still a major issue of contention today.²⁴ The figures given by the Task Force in 2000 indicates that nearly half of the population of the CHT were internally displaced that year due to the conflict. However, there is a general consensus among hill people, NGO workers and Bangladeshi academics that the Task Force list is inaccurate. The Returnee Jumma Refugee Welfare Association claims that up to 10000 Jumma IDP families were not counted, nor were the refugees who had become internally displaced after repatriation (IDMC March 2006)²⁵

Regardless of the actual number of IDP’s, there is no doubt that the issue of land return and who owns what in the aftermath of repatriation is a very difficult but crucial issue to solve. In addition the ongoing reclassification of forest as reserve forest makes it almost impossible for the government to be able to return land to the hill people while accommodating the Bengali settlers within the CHT. Having said that, a lot of Bengali settlers have announced they would be happy to move elsewhere if they were given an opportunity to settle down and make a sustainable livelihood (CHT Commission 2000: 47).

On top of that the whole issue of whose laws to follow when returning land or re-locate settlers is essential. While customary rights and usages are to be taken into account the Accord does not specify that the usages and customary rights override the land deeds provided to the settlers (Mohsin 2003: 51).

5.6.1 The Task Force and its limitations

The Peace Accord provides for a Task Force to deal with the internally displaced persons. The Task Force is to coordinate the rehabilitation of the internally displaced. However the task force has not been working effectively due to a number of reasons. Two of the main obstacles have been

²⁴ For further details on the number of IDP’s in the Chittagong Hill Tracts see table 3

²⁵ www.internal-displacement.org/idmc/website/countries.nsf

disagreements as to whether the Bengali settlers should be considered IDP's, and secondly, the proposed rehabilitation package for the internally displaced. The Task Force has sent to the Ministry a list of 128,364 families (approximately 500,000 individuals) of IDP's to be rehabilitated, comprising 90,208 Jumma families and 38,156 non-permanent settler families (CHT Commission 2000: 48). The JSS opposes this, fearing that this may lead to the legal recognition of settlers as residents of the CHT and thereby as legal owners of the land.

Originally the Peace Accord stipulated that the term "internally displaced" referred to the tribal population of the three hill districts (Clauses D1. and D2), thus excluding the Bengali population. But the situation changed and conflict arose when the task force reportedly received sudden instructions from the Prime Minister's Office to include the non-tribal population in the IDP population. This meant that Bengali settlers who had been forced to move when Jumma refugees returned from exile in India all of a sudden were included in the IDP group. This point was then included without consulting the Jumma representatives (IDMC 2006: 15).

Jumma leaders also refused to accept the proposed Task Force rehabilitation package because it did not make guarantees for property restitution, a main requirement by JSS when the negotiations started. After the Task Force chairperson resigned in August 2001, the Task Force did not function for more than two years. In October 2003, the BNP-led government finally appointed a new chairperson, but his official status is unclear, no financial support has been allocated for the work of the committee and its ten employees have not been paid since October 2001 (New Age 27 March 2005).

5.7 Conclusion:

The repatriation and rehabilitation of Jumma refugees have not contributed to de-alienation of land. Rather, it has nurtured old hatred between the Bengali settlers and the Jumma's, causing more instability. One fourth of the repatriated refugees have not yet received possession of all their land (CHT Commission 2000: 28). Although the Peace Accord gave promises to a safe return and proper restitution of land, the lack of proper rehabilitation shows that the government has no interest in keeping their promises, and oblige to international refugee law.

As a result, the whole process of repatriation has created more instability, transforming international refugees to internally displaced people instead. This is a much more vulnerable situation, because the protection of IDP's in international law is not very clear. More than 80000 internally displaced Jumma refugees have not yet been rehabilitated (CHT Commission 2000: 28).

The Bengali settlers claim they have a legal right to stay there because of their land documents. The Jumma on the other hand very often don't have any documents showing they are the rightful owners or users of the land, and thus have no right to stay there according to the Bengalis. If land documents are a precondition for keeping the land, implicitly this means that individual land titles have preference over collective land rights where no such paper exists.

Chapter 6: Conclusions

At the beginning of this paper the problem of land alienation was introduced and stated to be one of the most serious challenges for indigenous people across the world today. The reasons for such land alienation are manifold, depending on context. This paper has focused on the situation of the Jumma peoples living in the Chittagong Hill Tracts in Bangladesh. In this particular case the reasons for land alienation to a large extent is caused by government policies claiming they are “developing” the area, or policies to benefit the “greater good”, i.e. ignoring the wishes and opinions of the minority indigenous group.

The significance of collective land rights and land use has been discussed and contrasted with individual land titles. The guiding proposition, suggesting that collective land rights have eroded due to government policies has been proven looking at the history of land policies in the area, as well as discussing the contemporary situation –in particular the Peace Accord of 1997 and the refugee situation. However, land rights, as every other right, is not a given, but a social construct. Therefore, it is reason to believe that it can change over the years. Put it differently, as land use changes, land rights change, and these are redefined according to the context in which they are discussed (Freire, 2003: 363).

In the CHT there has definitely been a change in land use away from shifting cultivation to more sedentary agriculture, massive logging, and creation of reserve forest areas used for commercial exploitation. If rights are not a constant then, this implies that the Jumma peoples collective land rights may change in line with the changes in the contemporary society. In other words, as the society moves away from shifting cultivation and the core principles of collective land rights, the Jumma people’s perception of collectivity may change in favour of individual land titles. Or, it could adapt to the new society without rejecting the principle of collective land rights.

Core principles such as the right to obtain collective land rights and customary laws has been discussed and argued to be absolutely crucial in order for the Jumma to be able to keep their identity as a distinct people. In Bangladesh there has been a policy of assimilation rather than a celebration of cultural diversity. Thus, there seems to be a need for constitutional recognition of the Jumma people’s rights as a distinct people in order for them to be accepted in the society on equal terms with the majority Bengali population. This is also the message the Jumma people have given to the successive governments in terms of creating a collective identity. Having said that, institutionalisation of rights may lead not to their more secure protection but to their protection in a form that is less threatening to the existing system of power (Freeman, 2002: 85). In other words, institutionalisation of rights is a social process involving power, and thus might not always be beneficial for the people concerned.

The counterpart of ethnic groups striving for recognition, equality or independence is the attempt by dominant elites to impose, preserve or extend their hegemony over other ethnicities or over territory which they claim as their own (Stavenhagen 1996: 1). This general statement can certainly be applied to the CHT, and give a simple explanation as to why there has been a civil war in the area for 25 years. The Peace Accord signed in 1997 gave hope for lasting peace, but unfortunately the outcome was anything but peaceful. Promises given to the Jummas were broken on a massive scale, making people question the sincerity of the Bengali government entering the negotiations. As a result, the tensions between the Jumma and the Bengali settlers increased, leading to more land alienation. In addition what was left of a trust in the government to actually listen to the demands of the Jummas was crushed.

The Peace Accord also laid the foundation of thousands of Jumma refugees being repatriated. As the peace agreement promised the returning Jumma refugees they would get their land back, in addition to ensuring their security once returning, a large number of refugees took the risk of returning. Coming back to their old land they were met by Bengali settlers who claimed to own the land, showing legal land documents. As the Jumma had no land documents proving they were entitled to use the land, they were once again alienated from their land, becoming internally displaced people instead of refugees.

Although the policies of successive governments have tried its best to assimilate the Jumma population into the majority Bengali population, the Jumma has shown a strong agency to resist such assimilation. The claim for regional autonomy and the respect for customary law has been two key principles for the Jumma crucial to maintain their collective land rights. As these demands have been crushed by literally every government in charge, there is reason to question whether the Jumma should change their tactic in order to be heard. In other words, maybe the principle of collective land rights need to give way to other strategies leading towards the same goal.

It is also worth noting that the politics of identity has changed in accordance with the changes in the Jumma society. The tactic of creating a collective identity as Jumma peoples has not succeeded to reclaim their acknowledgement of customary laws and collective land rights. In the aftermath of the Peace Accord one can see a new division in the Jumma population; those who support the agreement and those who don't. Maybe this division will split in even smaller fractions with different interests. As the tactic of creating a collective identity to fight for their rights did not succeed, a fragmented Jumma population may fight individual struggles for the same cause. Or maybe new interests will emerge, in favour of individual property rights. No one can tell what the future brings.

6.1 The Way Forward

An indication of what will happen in the future may be found in the international discourse on indigenous rights. The willingness and capacity of an international community of nationstates to take the first step towards accommodating indigenous peoples' belief in their own nationhood have developed relatively recently, in parallel with the universal thinking of human rights (Niezen, 2003: 30). Today, there is a growing networking among indigenous groups across the world that is striving for greater recognition of collective rights. In turn, these efforts are influencing local politics, sharpening the boundaries of collective identity, and encouraging more ambitious goals of autonomy in indigenous communities worldwide.

6.1.1 The emergence of a new human rights discourse

The past decades have witnessed an increased focus on the relationship between land rights and international human rights law from the particular perspective of indigenous peoples' rights. According to Patrick Thornberry, after the ambiguous discourse of international law, indigenous peoples have now entered the age of rights (Thornberry 2002). A part of these rights are the right to collectively own or use land. The emerging human rights discourse on collective land ownership we see today integrates all the social, cultural, and spiritual facets of indigenous peoples' relationship with their territories, and avoids the danger of compartmentalization of the present dichotomy between right of ownership and right of use (Gilbert 2006: 140). This fits well with the indigenous peoples' holistic view on land use and ownership.

The only binding instruments that recognize indigenous peoples' rights to land ownership today are the two ILO treaties concerning indigenous and tribal peoples (ILO 107 and 169). Overall, the ILO 169 recognizes indigenous people's traditional form of land ownership as a source of property, and clearly affirms that based on such traditions, States ought to protect indigenous peoples' right to a collective form of ownership (Gilbert 2006: 107). Although the ILO 169 remains the only binding treaty protecting indigenous peoples' collective land rights one cannot see this in isolation, but as a part of a growing acceptance of such collective ownership.

Moving one step down, one can look at the evolution of a new human rights discourse at a national level. National constitutions increasingly recognize the collective nature of indigenous peoples' relationship to their territories, especially how land rights play a role in the social organisation of society (Gilbert 2006: 110). As Shadrack Gutto asserted, the recognition of property rights in land "can be progressive or reactionary; it can promote social justice and equality or entrench privileges of a powerful minority and thus consolidate systems and relations of oppression." (Gutto 1995). In the case of the Jumma it is rather a question of oppression from a majority group, but the same logic can be applied. In order to secure collective land rights for the

Jumma as well as other indigenous groups across the world there thus needs to be a link between international human rights law and national laws and jurisdiction. Constitutions in Africa, Asia and Latin America²⁶ which were drafted recently recognize to a larger extent the indigenous peoples' right to collective ownership (Gilbert 2006: 111). These are clear indications of a change in perception of what is important, thus strengthening the indigenous peoples' collective rights.

For the Jumma, international networking may be the solution to make a stronger claim for their rights. However, the current situation tells us there is still a long way to go before their collective land rights will be respected and fulfilled.

²⁶ E.g in the Constitutions of Ecuador (1988) and Venezuela (1999) the concept of indigenous peoples land and territories have been expanded to also include the collective aspect.

7. Tables:

Density of Population

Per square mile/ (per square kilometre)

Table 1

	1951	1961	1974	1981	1991
CHT	57	75	100	147	190
	(22)	(29)	(39)	(54)	(74)
Bangladesh	761	922	1286	1567	1884
	(294)	(356)	(497)	(605)	(728)

Source: *Statistical Yearbook of Bangladesh 1982*.

Preliminary Report Population Census 1991 in: Mizanur Rahman, 1992

Demographic Composition of the Chittagong Hill Tracts (1872-1991)

Table 2

Year	Indigenous	%	Non-indigenous	%	Total (CHT)
1872	61,957	98,26	1,097	1,74	63,054
1901	116,000	92,63	8,726	7,37	124,762
1951	261,538	90,92	26,150	9,08	287,688
1974	372,526	73,71	135,673	26,29	508,199
1981	441,774	59,16	304,873	40,93	746,647
1991	501,144	51,42	473,301	48,67	974,445

Source: Compiled from various sources including *CHT District Statistics 1983*, *Statistical Pocket Book Bangladesh 1994*

In: R.C.K Roy 2000: 113

Number of Internally Displaced in the Chittagong Hill Tracts

Table 3

Districts	Jumma families	Bengali families	Total
Rangamati	35,595	15,516	51,111
Khagrachari	46,570	22,371	68,941
Bandarban	8,043	269	8312
Total	90,208	38,156	128,364

Source: Government Task Force on Internal Displacement/ in: internal displacement monitoring centre, special report March 2006 ([http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/BFF11FDF46B5B85EC1257139003C3B76?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/BFF11FDF46B5B85EC1257139003C3B76?OpenDocument))

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APPENDIX 1

The establishment of the Chittagong Hill Tracts Commission

Alarmed by reports of human rights violations that kept on pouring in from the Chittagong Hill Tracts since the seventies, human rights organisations and NGOs started taking up the issue and gave wide publicity to it. Questions were raised at the United Nations and the International Labour Organisation. However, the Bangladesh government continuously denied that there were any problems at all. The idea for an independent international commission of investigation arose during December 1985 when the then Bangladesh Minister of Finance announced to a meeting at the Danish Parliament in Copenhagen that the Bangladesh government would be delighted to welcome a mission to the CHT. In 1986, the first International Conference on the Chittagong Hill Tracts was held in Amsterdam and a resolution was passed to establish an independent commission to investigate allegations of human rights violations in the hill region.

At the end of 1989, The Chittagong Hill Tracts Commission was officially established at the initiative of the International Working Group on Indigenous Affairs (IWGIA) and the Organising Committee Chittagong Hill Tracts Campaign. The Commission is jointly chaired by Douglas Sanders (Professor of Law) from Canada and Wilfried Telkaemper (Vice President of the European Parliament) from Germany. Other Commissioners are Rose Murray (Aboriginal Community Worker) from Western Australia, Leif Dunfeld (Sami Lawyer) from Norway and Hans Pavia Rosing (Representative in the Danish Parliament from Greenland).

The Commission was ready to travel in November 1990. Four resource persons were requested by the Commission to be present for the trip to India and Bangladesh: Teresa Aparicio (Denmark), Jenneke Arens (the Netherlands), Andrew Gray (Great Britain) and Wolfgang Mey (Germany). Unfortunately, at the last minute, Commissioners Leif Dunfeld and Hans Pavia Rosing were unable to travel, the former due to ill health and the latter due to a general election in Denmark.

After obtaining permission from the Indian government, the Commission visited the refugee camps in Tripura from 21-26 November and after that proceeded to Bangladesh. The Bangladesh authorities reconfirmed their permission to travel to the Hill Tracts and the General Officer Commanding (GOC) Chittagong of the 24th Infantry Division of the Bangladesh Army gave the final approval. He gave an assurance that the Commission could travel freely and without restriction in the Chittagong Hill Tracts and would be allowed to talk to anyone in private. The army co-operated as much as possible with the Commission throughout its visit. In total, the Commission spent 23 days in the hills in December 1990.

Previously, several missions to the Chittagong Hill Tracts, among others by the ILO and Amnesty International, had been carried out, however, they

had had very restricted access to the area and had been continuously accompanied by the military. Thanks to the generosity of the Bangladesh authorities, The Chittagong Hill Tracts Commission was the first fact-finding team ever to be given permission to carry out their investigation work freely in the Chittagong Hill Tracts.

APPENDIX 2

Full Text of the CHT Peace Accord

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

Keeping full and unswerving 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 nontribal 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, Betbungia 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 subclause 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 (nontribal) 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 coordination 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 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.