The Land Question and the Chittagong Hill Tracts Accord

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Abstract

This paper discusses some of the key land-related issues in the Chittagong Hill Tracts (CHT) region in Bangladesh and attempts to discuss the manner in which they have been addressed in the CHT Accord of 1997. It gives a brief account of the historical background of land administration in the CHT, including the effects of colonisation on the land rights of the indigenous peoples of the CHT. The paper will also consider the likely trends in the near future with regard to the aforesaid issues and other related matters.

Introduction

A Chakma leader from the CHT is on record as having once said that in the CHT, "the land problem is the main problem."[2] In the same vein, a writer on the CHT issue concluded that: "To any observer of the CHT it is crystal clear that peace in the CHT is largely dependent upon the resolution of the land issue".[3] This opinion is shared by many other people too.

Although dependence on land as a primary source of income has decreased over the centuries, and especially over the last three decades, the majority of the population of the CHT is still known to be dependent on land for a living. This is especially true in the case of the indigenous people or "hill" people of the region. Moreover, land is closely connected to the social, cultural and spiritual lives of the indigenous peoples of the CHT. Therefore, many feel that the success or failure of the 1997 Accord in bringing forth lasting peace and in paving the way for socio-economic progress in this hill region is very largely dependent upon how the land-related problems are addressed in the coming years.

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[2] Gautam Dewan, former chairman of the Hill District Council, Rangamati as cited in the Chittagong Hill Tracts Commission, *'Land Is Not Ours': Land and Human Rights in the Chittagong Hill Tracts, Bangladesh*, IWGIA, Copenhagen (1991), p.58.

[3] Amena Mohsin, *Chittagong Hill Tracts Peace Accord: Looking Ahead*, The Journal of Social Studies, University of Dhaka, Aug-Oct 1998, p. 114.

It is interesting to note that although the question of a revival of self-rule in the CHT had been a burning issue for CHT leaders for more than half a century, the issue of land as a separate issue, or as a key issue is not even noticeable up to the 1980s, such as in the demands of the JSS that were submitted to the Bangladesh government. [4] It seems that it was only after the JSS's five-point charter of demands – which included a demand for the removal of all Bengali settlers who had settled in the region since 1947 – was summarily rejected that the land issue was discussed in detail, such as with regard to the land administration powers of the district councils, the question of resolution of disputes over land between the settlers and the indigenous people, the question of the indigenous people's customary land rights and so forth. Nevertheless, what is not in doubt is the fact that the problem of land dispossession was seen to have reached crisis proportions only after the advent of government-sponsored settlers in the CHT in the late 1970s and early 1980s.

The Accord of 1997 addresses various land-related issues through the strengthening of the hill district councils, [5] the formation of a regional council for the CHT, and with regard to various provisions that sought to deal with the issues of land dispossession, the recognition of customary land rights of the indigenous people and other related issues. Some of the most crucial issues are discussed in the following sections. However, I feel that it is necessary to first provide a brief historical background to the land-related problems of the CHT.

Historical Background

Colonisation & Land Dispossession

The CHT was formally annexed to the then province of Bengal in 1860, but the process of colonisation had actually started during the time of the East India Company in the 1770s, a decade or so after the Company had taken over the administration of Bengal by defeating the Mughal emperor and the semi-independent ruler of Bengal at the Battle of Buxar.[6]

Colonisation brought in major changes in the region's administrative system and in the way that the indigenous peoples and their kin-oriented social groups and other communities were organised. Colonisation led in some cases to the centralisation of authority (up to a certain

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[4] See for example, the memorandum of the three chiefs and other traditional leaders of the CHT to the British prime minister dated 1 June, 1939, the four-point demand of M. N. Larma, the founding leader of the *Jana Samhati Samiti* ("JSS"), to President Sheikh Mujibur Rahman in 1972 and the five-point demands of the JSS which were submitted to negotiators of the Bangladesh government in 1987.

[5] The hill district councils were established on the basis of an agreement reached between the Government of Bangladesh and a number of indigenous leaders (not including the JSS) in 1988. Consequently, the Local Government Council Acts of 1989 were passed and thee district level councils were constituted in 1989. However, a very significant number of the indigenous population (I would say that they constituted a clear majority) rejected the 1988 agreement. This agreement bye-passed the JSS and overlooked such vital issues as the refugees, the internally displaced people, the continuing internal conflict and resulted in the formation of district level councils that had very little authority to deal with administration of the CHT.

[6] Muhammad Ishaq (ed.), *Bangladesh District Gazetteers: The Chittagong Hill Tracts*, Ministry of Cabinet Affairs, Establishment Division, Government of Bangladesh (1975), p. 239.

period), such as in the case of the Chakma and Marma, and to decentralisation, such as in the case of the Bawm and Mru.[7] On the whole, the indigenous institutions became weaker and weaker, while the British administrators arrogated to themselves supreme powers over general administration and resource management.[8] Therefore, the indigenous leadership was unable to maintain more than a nominal influence over the way in which the region's natural resources were being utilised. This trend continued during the post-colonial period as well.

One of the most direct after-effects of colonisation was changes in land administration policies aimed at the maximisation of revenue output from the lands and forests of the region. Between the 1860s to the 1880s, the British government introduced a toll tax on the export of forest produce from the region, [9] and declared that one-fourth of the lands of the CHT were to be re-designated as "reserved" forests. [10] A large part of these forests was cleared of the natural vegetation and converted into teak plantations with imported saplings from Burma.[11] Thus started the process of managing the forest areas for the economic benefit of the state without any corresponding measures to share the benefits arising from the utilisation of the resources of these forests and plantations with the people of the areas concerned. Cultivation of lands within the reserved forests now became a criminal act in the eyes of the law. The combined effects of the revenue-oriented forestry policies of the British government led to the impoverisation of numerous indigenous communities who were dependent upon these lands for swidden cultivation, hunting, trapping and gathering, apart from the sale of minor forest produce. It is ironical that, in essence, the administration of the "reserved" forests continued as before during the rule of the succeeding post-colonial governments of Pakistan and Bangladesh.

Land-Related Problems in the Post-Colonial Period

Apart from the continuance of the colonial-style administration of the reserved forest areas of the CHT by the Pakistani and Bangladeshi governments, two major government-sponsored programmes led to the dislocation and impoverisation of the indigenous peoples of the CHT. These were, the construction of the Kaptai Dam in 1960 and the transmigration of ethnic Bengali people to the CHT under government sponsorship in 1979 and in the early 1980s. [12] Of course

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[7] Wolfgang Mey, *Implications of National Development Planning for Tribal Concepts of Economy and Politics: A Contribution to a Critique of Concepts of Development* in Mahmud Shah Qureshi (ed.), "Tribal Cultures in Bangladesh", Institute of Bangladesh Studies, Rajshahi University, Rajshahi (1984), p. 331.

[8] For a critical analysis of the British government's land policies in the CHT, see Raja Devasish Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts* in Shamsul Huda (ed.), "Land: A Journal of the Practitioners, Development and Research Activists", Vol 1, No. 1, Association for Land Reform and Development, Dhaka, February 1994, pp. 12-14.

[9] Ishaq, op. cit., p. 107.

[10] Ibid., 107, 109.

[11] Ibid.

there were other developments of a relatively smaller scale that exacerbated the land-related problems. One such development was a recurrent theme which has continued unabated since the start of Pakistani rule and continued until very recent times, namely, the transfer of title and/or possession of wet-rice lands of indigenous farmers to ethnic Bengali settlers, whether legally sanctioned or not. The other was the grant of leases of lands under the ownership and/or occupation of indigenous people to non-resident individuals and private companies for the setting up of industrial plants and extraction-oriented tree plantations. The latter happened especially in the 1980s.

It may have been noted that I have so far referred only to the problem of land dispossession or land loss as perceived by the indigenous people. From the side of the ethnic Bengali people too, there were and are feelings of discontent and a sense of betrayal by the government. Here I would distinguish between two groups of Bengali migrants. The first group would include long-time residents of the CHT – largely wet-rice farmers - who were affected by the Kaptai Dam and who received inadequate compensation in cash or through land grants, as in the case of the indigenous people who were dislocated by the dam. The second group would include government-sponsored settlers who were issued title deeds to lands within the CHT. Despite verbal assurances of the availability of huge extents of virgin lands lying fallow in the CHT, the settlers found that the CHT indeed contained little or no lowlands suitable for irrigation-oriented plough agriculture – the only method of cultivation with which they were familiar – that were not already under the ownership and/or possession of local indigenous people.

The point that I wish to emphasise here is that the prevalence of a myth about the supposed availability of huge extents of cultivable lands complicated the issue and perhaps induced a number of government officials to undertake a land grants policy that deepened the land crisis in the region. I might mention here that an alternative view holds that the government was quite well aware about the scarcity of lands suitable for intensive agriculture but nevertheless went ahead with the transmigration programme. The proponents of this view argue that the main aim of the population transfer programme was not to rehabilitate the transmigrants, but to use them as "human shields" in the security forces' war against indigenous guerilla fighters and to reduce the indigenous people into a numerical minority in the CHT. [13]

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[12] For the extent and nature of dislocation caused by the Kaptai dam, the most detailed and well-researched account is probably contained in David E. Sopher's *Population Dislocation in the Chittagong Hills,* in Geographical Review, Vol LIII, New York (1963). For the transmigration programme, see: (i) Raja Devasish Roy, *The Population Transfer Programme of the 1980s and the Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts* in Subir Bhaumik et al (eds.), "Living on the Edge: Essays from the Chittagong Hill Tracts", South Asia Forum for Human Rights, Kathmandu (1997), pp. 167-208; (ii) Julian Burger and Alan Whitaker (eds.), *The Chittagong Hill Tracts: Militarization, Oppression and the Hill Tribes* (Report No. 2), Anti-Slavery International, London (1984); (iii) The Chittagong Hill Tracts Commission, *Life Is Not Ours: Land and Human Rights in the Chittagong Hill Tracts, Bangladesh,* Amsterdam and Copenhagen (1991), pp. 58-78; (iv) Rajkumari Chandra Kalindi Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh,* JUPNET, Europe (1996), pp. 48-113.

[13] This is based upon discussions that I have had over the years with indigenous people in the CHT from various walks of life, including political leaders, students and farmers. See also, Mohsin, op. cit., pp. 113, 114.

In any case, a detailed analysis of the available land-related data clearly indicates that with regard to the availability of farmlands that may be cultivated on a viable and sustainable basis, the CHT is as constrained, or perhaps even more constrained, than any other average district within plains Bangladesh. This is largely because of the topography of the CHT which does not allow intensive irrigation-oriented agriculture except in the valley lands and other lowlands, whose area is very limited indeed.[14] The highlands can of course be utilised for other forms of cultivation, like horticulture, tree and bamboo farming, and for the traditional *jum* or swidden cultivation. But due to such inherent problems as the relative infertility of the soils, the sharp inclines of the slopes and the presence of marketing problems (horticulture and tree-farming being directly dependent on market sales), the highlands are not capable of sustaining a very large population that is dependent upon cultivation as the primary means of livelihood.[15]

Another development that is also indicative of the problem of land scarcity in the CHT was the exodus in 1964-65 of more than 10,000 indigenous people (almost predominantly ethnic Chakmas) affected by the Kaptai Dam to India. These people were ultimately re-settled in Arunachal Pradesh in India, where they remain as stateless refugees, under constant threat of eviction.[16]

The aforesaid developments can be said to be the "key" issues that deepened the land-related crisis in the CHT. However, there were other parallel developments based upon what I shall call the "colonial" paradigm of land-use that also contributed significantly to the marginalisation of farming communities in the CHT, especially from among the indigenous people. Foremost among these were reforms in the land-allocation laws and the expansion of the forestry sector, including an attempt to increase the area of the reserved forests by including farmlands and other lands used and occupied by local farmers.

Since the start of British rule in the CHT, the major powers on land administration at the district level were vested in the government's functionary called the "deputy commissioner" or "DC". However, unlike in the other districts of the country, the DCs of the CHT were obliged to act in

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[14] According to data contained in the report of a soil survey conducted in the CHT in 1964-66, only 3.1 per cent of the CHT lands were found to be suitable for "all-purpose agriculture" as against 72.9 % that was found suitable only for "forestry". See Forestal Forestry and Engineering International Limited, *Chittagong Hill Tracts: Soil and Land Use Survey (1964-66)*, Vancouver (1966), Vol. 2, Appendix 1. Similarly, official statistics show that while in Bangladesh as a whole, about 22.20 %, 26.27% and 6.61% of the lands were being respectively used for one-crop, two-crop and three-crop cultivation, the corresponding figures for the CHT were, respectively, as low as 4.35%, 1.70% and 0.46 %. See data of *Statistical Year Book of Bangladesh: 1992*, Table 4.27.

[15] For a detailed discussion of the problems in the horticulture and forestry sector in the CHT, see Raja Devasish Roy, *Land Rights, Land Use and Indigenous Peoples in the Chittagong Hill Tracts*, in Philip Gain (ed.), 'Bangladesh: Land, Forest and Forest People', SEHD, Dhaka (1998), pp. 94-104.

[16] For the problem of these refugees, see, among other sources: (i) Peoples' Rights Organization, *Report on the Question of Indian Citizenship Rights of the Stateless Chakmas and Hajongs of Arunachal Pradesh* , Narainha Ph 1, New Delhi 1110018, September 1992; and (ii) Sabyasachi Basu Ray Chowdhury and Ashis K. Biswas, *A Diaspora is Made: the Jummas in the North-East India* in Bhaumik, op. cit., pp. 139-166.

consultation with headmen[17] before providing "settlements" (freehold grants) of lands and before providing the mandatory permission for the transfer of land ownership. These provisions are contained in rule 34 of the CHT Regulation of 1900 - the main legal instrument for the administration of the region – and "standing orders" issued by successive DCs. However, in the cases of the grants of leases of lands above a specified amount, residuary powers were retained by the National Board of Revenue (now the Board of Land Administration) and the question of the involvement of the headmen was not expressly mentioned.

One of the most fundamental changes to the land-allocation laws in the CHT in recent times came through an amendment to the CHT Regulation in 1971. [18] This law reduced the area of land that could ordinarily be granted to resident farmers (from 25 acres to 10 acres) by the DC. At the same time, provisions were introduced to empower the Commissioner of the Chittagong division and the National Board of Revenue to grant leases for areas not exceeding 100 acres, and above 100 acres, respectively. Such leases were to be granted only to "deserving industrialists" for the setting up of industries and for the raising of commercial plantations, and for "residential " purposes. Hitherto, grants of lands in the CHT could only be made to the indigenous people and, in a restricted manner, to long-term non-indigenous residents of the region. However, it was clearly stipulated that land grants could be made to "outsiders" only with the "prior approval" of the Board of Revenue. [19]

This law was never acted upon, as it was passed only a few months before Bangladesh became independent. However, another amendment to the same law was made in 1979, on the eve of the transmigration programme.[20] This law maintained most of the provisions of the 1971 amendment, but removed the proviso that expressly required the "prior approval" of the Board of Revenue before land grants could be provided to "outsiders". But this is only a narrow interpretation of the laws. A broader interpretation of the concerned laws suggests that there were other provisos as regards land grants in general, and grants of lands to non-residents in particular, which had to be satisfied before such grants could be made. [21] In any case, irrespective of what the legal implications might have been, a few hundred thousand landless or river-erosion affected poor

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[17] The headmen are appointed for life by the deputy commissioners in consultation with the "circle chiefs". They have jurisdiction over a geographical area known as ":mauzas", and about more than 90% of them are indigenous persons. Their responsibilities include the granting of advise to the DCs on settlements and transfers of land, collection of land revenue, protection and management of the natural resources of the mauzas, arbitration of cases concerning minor civil matters and minor criminal offences, and the trial of cases involving indigenous personal law and customary law.

[18] Amendment to rule 34 of the CHT Regulation vide Notification No. 1L-15/69/216-R.L. dated 16 September 1971 and published in the Dhaka Gazette, Part I, dated, 21 October, 1971.

[19] Rule 34(1)(l) of the 1971 amendment.

[20] Amendment to rule 34(1) of the CHT regulation vide S.R.O. 72-L/79 as published in the Bangladesh Gazette, Extra, on 31 March, 1979.

[21] See Roy in Bhaumik, op. cit., pp. 173-180.

Bengali people from several districts within plains Bangladesh were rehabilitated in the CHT between 1979 and 1983 or so.[22]

The other development which has the potential to dislocate rural farmers was a process that sought to increase the area of the reserved forests by including areas under the administration of the district authorities in order to implement plantation forestry schemes. This was initiated by an official proclamation in the 1990s – during the rule of the BNP government under Khaleda Zia – and was to be finalised in 1997-98 under the present Awami League government led by Sheikh Hasina. If given effect to, this process is likely to dislocate tens of thousands of rural farmers. Most of the would-be-affected people are indigenous farmers, but a significant number of ethnic Bengali rehabilitees of the Kaptai Dam may also be adversely affected. The people of the designated areas formed themselves into a committee to peacefully resist this ostensibly "environmentally friendly" process and organised rallies and sent memoranda to the government. I have been told that finally, after repeated pressures, the government has agreed to re-negotiate the entire proposal through consultations with the people of the areas concerned.

Some of the aforesaid matters were directly addressed by the 1997 Accord, while others were not addressed at all, or were addressed in an indirect manner. The following discussion attempts to analyse the major changes that are to be effected by the 1997 Accord.

Land Issues in the 1997 Accord

The major changes that are proposed by the accord contain the following provisions: (i) to enhance the land administration powers of the hill district councils; (ii) to enable the district councils to receive a percentage of the income from forest resources and from the royalties from mineral extraction; (iii) to provide for the settlement of land-related disputes through the formation of a commission on land; (iv) to cancel the leases of lands granted non-resident individuals and corporate bodies where the concerned lands have been left unutilised for more than ten years; [23] and (v) to conduct a survey of the lands in the CHT.

Land Administration by the Hill District Councils

The powers of the hill district councils – which are guaranteed a two-thirds indigenous majority and an indigenous chairperson – are proposed to be enhanced in three major ways. The first of these measures concerns the requirement of the "prior consent" of the concerned district councils

[22] The estimates of the settlers vary from 250,000 to 400,000 people. I personally feel that the smaller number is closer to the actual figure.

[23] Most of these provisions are contained in section B of the Accord, except in the case of the land commission and the land survey, which are covered mentioned in Part D of the Accord.

before any "settlements, leases and transfers" and compulsory acquisitions" are made. [24] The second measure proposes to include "land and land administration" within the subjects that will be under the direct administration of the district councils. [25] The third measure concerns the transfer of authority to the hill district councils over the functions of lower-tier land and revenue administration officials such as "assistant commissioner (land), kanungo, chainmen and headmen". [26] The fourth measure stipulates that the district councils will receive the land development taxes that are raised in the region and that they will receive a portion of the royalties from income from forest resources and from mineral extraction.

The Consent of the Hill District Councils

This provision is no doubt a development of great significance. This does not necessarily mean that the civil district administration (and the traditionally appointed headmen) will have no further role with regard to land and revenue matters, but the provisions clearly indicate that now the ultimate responsibility of policy-making on land grants and land transfers (including the matter of compulsory acquisition for public purposes) will vest in the representatives of the residents of the CHT, namely, the members of the district councils, and not upon government functionaries. What is of much more importance is to ensure that decision to allow or disallow land grants and transfers to are based upon considerations that seek to protect the land rights of the indigenous people and other residents of the region, and particularly, the marginalised sections among them. If on the other hand, the councils were to allow land grants or transfers to non-resident individuals or corporate bodies on a significant scale in exchange of lucrative licence fees or otherwise, that would certainly be a most undesirable development. Therefore, we have to wait and see how the district councils deal with this matter when the requisite authority is eventually transferred to them.

Control over Land Administration and Share of Revenue

These matters are clearly related to each other and will perhaps entail the execution of a memorandum of understanding between the concerned ministry (the Ministry of Land) and the hill district councils to transfer the requisite authority to the latter, a step that is yet to take place. The potential strengthening of the district councils' fiscal autonomy through land development taxes and from royalties on forest and mineral resources is clearly a positive development. But I would like to hope that the district councils will exercise their powers on tax-raising on land (and even on other matters) sparingly, so that it does not amount to a burden for the disadvantaged and marginalised groups among the CHT residents who have small landholdings.

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[24] Clauses 26(a) and 26 (b) of Part C of the Accord.

[25] Clause 34(a) of the Accord.

[26] Clause 26(c) of the Accord.

In the case of royalties, the quantum of resource-sharing between the national government and the district councils has not been specified. This is a likely source of conflict in the future, especially if gasfields and oilfields are located in the CHT and drilling activities are started (an American company is currently undertaking survey work in the CHT). In the case of royalties from forest resources, the Accord does not specify whether "forests" implies all types of forests, including both the "unclassed state forests", that are within the direct jurisdiction of the district councils, and the "reserved" forests, which are administered by the Ministry of Environment and Forest. It is quite likely that the Government of Bangladesh may prefer to construe this provision in the narrow sense. This would be most unfortunate indeed, and would be contrary to the ILO Convention on Indigenous and Tribal Populations (Convention 107 of 1957) and the Convention on Biological Diversity, both of which have been ratified by Bangladesh.

The Likely Impact of the Changes

Although the aforesaid matters have been included within the Local Government Council (Amendment) Acts of 1998, the requisite authority has not yet been transferred to the councils. Nor is it as yet known, what shape the future land administration set-up will take. Therefore, how significantly this reform will help the residents of the CHT will depend upon the nature of the new arrangements.

Having regard to the cumbersome methods that are generally employed in dealing with applications for land settlements, whether in the CHT or elsewhere in the country, it is of vital importance to ensure that the existing procedures are simplified and corruption is controlled and reduced. If this is not done, it would make little difference to the poor and marginalised sections among the CHT residents that it is now their representatives in the district councils that have the final authority and not the civil servants of the government. It would therefore be essential to ensure that applicants for land grants are able to obtain land ownership documents promptly, with the minimum of facilities and at little or no cost.

However, there are some other issues that need to be considered in assessing the likely impact of these changes on the CHT people, especially the marginalised farmers and others living in the relatively remote areas. Firstly, the proposed changes will no doubt hasten the pace of privatisation and monetisation of the rural economy of the CHT. Some may perhaps see these changes as an integral part of the global trends that are affecting Bangladesh (along with the CHT) with regard to privatisation and monetisation. Without getting into a discourse on the positive or negative impacts of such a process, I would merely like to say here that if these changes are ushered in at too fast a pace (as is likely, considering also the parallel increases of cash flow into the region through macro and micro credit, investments in forestry and other sectors, mining, development projects funded by foreign aid and loans, and so forth), they could make fundamental changes to the occupational patterns, social customs and cultural lives of the people of the CHT, and particularly, the indigenous people.

Secondly, this may lead to the privatisation of lands hitherto considered to be the common property of villagers, such as forest areas, grazing lands and jum (swidden) lands. Such a development is quite likely to the lead to the impoverisation of the most marginalised sections among rural communities, a trend that is clearly noticeable from the 1960s onwards, when more and more indigenous farmers were forsaking jum cultivation (involving custom-based ownership or "usufruct" rights) for more sedentary modes of land-use (involving formalised private ownership). And if non-resident individuals or corporate bodies were allowed free access to such privately held property, the situation would of course be many times worse.

A third concern that I have is that the inhabitants of the relatively remoter areas, especially, but not exclusively, the members of the smaller indigenous peoples, will either be left out of this process or remain as very marginal actors in a process over which they have little or no control. Since marketing of farm produce from these areas is not possible, because of the lack of communication facilities, the communities of these areas will largely remain dependent on subsistence-oriented jum agriculture, and they will have little or no incentives to try to register their land rights in the form of private property. Therefore, the economic disparities between the land-owning and relatively well-to-do communities or "classes" and those involved in the traditional and largely subsistence-oriented occupations is more than likely to be heightened to hitherto unknown proportions. And it is well to bear in mind that the latter communities will most likely be joined by those communities or groups in the less remote areas who will be marginalised by the process, both in the physical and geographical sense and in the sense of their common situations. These economic disparities could well lead to deeper cleavages within indigenous society and is a potential source of conflict in the future. Of course, such developments need not take place, if concerted efforts are made to address the socio-economic problems of these communities on a priority basis and n the manner of their own choices.

A Commission on Land

The CHT Accord of 1997 provides that there will be a commission on land which will be empowered to "… provide remedies on cases of land-related disputes, including the authority to declare that those cases which involved illegal settlements and dispossessions are void under the law". [27] It provides further that the decisions of the commission will be final and that no appeals will lie against its decisions.[28] The commission will be headed by a retired judge of the Supreme Court of Bangladesh and will include the concerned circle chief, the chairperson of the CHT Regional Council (or her/his representative), the Divisional Commissioner/Additional Divisional Commissioner and the concerned chairperson of the hill district council. The commission is to function for three years, but its term of office may be extended in consultation with the regional

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[27] Clause 4, Part D, of the Accord.

[28] Ibid.

council. The commission will be obliged to carry out its functions by taking into account the "laws, customs and conventions prevailing in the CHT". [29]

Although the commission's members have been named (including the name of the person who is to head it) and the government has officially declared the constitution of the commission through a formal notification, its exact terms of reference and the detailed nature of its functions are not yet known.[30] It is inconceivable that full legal validity would attach to the decisions of this commission without the passage of an Act of law, especially since there are to be no appeals against the decisions of the commission. The absence of opportunities of appeal would reduce delays and I think that this is a requirement that will serve the purposes of providing justice in an expeditious manner. However, although no appeals will be allowed against the decisions of the commission, the option of judicial review in the Supreme Court may act as a check and balance on the commission's decisions. [31]

I feel that the time limit of three years seems to short, especially for two reasons. Firstly, "class actions" are not provided for under Bangladeshi law. Therefore, potentially, there will be tens of thousands of individual complaints that will have to be enquired into and decided upon by the commission. Secondly, except for the head of the commission, who is a retired person, all the other members have day-to-day administrative responsibilities in their various capacities, and therefore, they will surely not be able to provide more than very limited time in their role as members of the commission.

The other matter that is more than likely to be a source of severe difficulty is the question of priority when conflicting claims based upon registered title from the district land registries, titles based on the registers of the headmen, ownership and user rights based upon informal leases granted by headmen (for the Karnaphuli reservoir area lowlands known as "fringelands"), rights based upon long user or prescription, and custom-based rights come up before the commission. Another noteworthy point is that the terms of reference of the commission suggest that it will be open to both the indigenous people and non-indigenous settlers to lodge complaints before the commission. The fact that the majority of the members of the commission are indigenous people should mean, at least theoretically, that the commission will have the benefit of their knowledge and experience with regard to land claims based upon indigenous customs, practices and usages and local conventions governing the use and ownership of lands. However, that by itself does not guarantee that ownership rights based upon local customs, usages etc. will be treated at par with

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[29] Clauses 5 and 6, Part D.

[30] Circular No. Bhu: Ma:/Sha-2(Survey)63/97-249 dated 3 June, 1999 of the Ministry of Land.

[31] Under Bangladeshi law, even if a particular statute declares that no appeals will be entertained against the decisions of a court or other tribunal or body, judicial review of such decisions on grounds of procedural irregularity or in cases involving the violation of 'fundamental rights' as recognised in the Bangladeshi constitution cannot be legislated against.

ownership rights based upon registered title. Then there is also the related question of whether the land grants made to the government-sponsored ethnic Bengali settlers amounted to a valid exercise of power in accordance with law, not only because of custom-based rights of the indigenous people, but because of other formalities and procedures that were expressly provided for in the relevant laws on settlements and leases.[32] I any case, it is clear that the resolution of disputes between indigenous residents and non-indigenous government-sponsored settlers will be the most pressing matter before this commission.

Whatever might be the shortcomings of the process, the fact that a commission on land with powers in the nature of a tribunal is going to be formed to provide remedies on land disputes is, I feel, not only a positive development for the CHT, but a sound precedence for dealing with small-scale disputes even in other regions of Bangladesh. At present, in the name of rule of law, small landowners have to exhaust the entire spectrum of appellate authorities to obtain justice, at huge expenses and loss of time. I feel that a commission of the like nature in other parts of Bangladesh would also be a most desirable development in seeking to protect the land rights of indigenous people, marginalised farmers and small landholders.

Cancellation of Leases made to Non-Residents

Clause 8 of section D of the Accord states the following: "Land Grants for Rubber Cultivation and other Purposes: Where grants of lands have been made to non-tribals and non-resident persons for rubber plantations or other plantations, and where these grant-holders have not undertaken project work or have not used these lands in a proper manner, the concerned settlements will be cancelled (my translation)".

I have no information that suggests that any steps have as yet been taken in this regard. However, it is very important for many poor indigenous farmers, especially in the Bandarban district, and to a lesser extent in the Khagrachari district (there are only a few exceptional cases in Rangamati district) whose farmlands were handed over to relatives and friends of senior civil and military officials and powerful politicians just because the former had no land records to show for their long use and occupation of these lands. This matter can be resolved at the district level and is a fairly straight-forward matter, but the disadvantaged situation of the affected indigenous farmers has precluded any substantive action in this regard. The matter calls for awareness-building among the affected people and perhaps underscores the very urgent need to take immediate steps to disseminate information on the Accord in particular, and about basic rights in general, to the disadvantaged communities in the CHT.

[32] For a detailed discussion of the legality of these land grants, see Bhaumik, op. cit., pp. 173-180.

Land Survey

Clause 2 of Part D of the Accord reads: After the signing and implementation of an agreement between the government and the Jana Samhati Samiti, and after the rehabilitation of the tribal refugees and tribal [internally] displaced people, the government will, in consultation with the to-be-constituted regional council and in accordance with this agreement, and as soon as possible thereafter, cause a land survey to be conducted in the Chittagong Hill Tracts, and after resolving land-related disputes through proper consideration of the matters concerned, the government will have the concerned lands recorded in the names of the tribal people and ensure the protection of their land rights (my translation)".

Before the 1997 agreement was signed, the Government of Bangladesh had made various attempts to start a "cadastral" survey of the lands in the CHT.[33] This was resisted by the indigenous people of all three districts because it was felt that the exercise would help strengthen the position of the government-sponsored settlers as against the indigenous people whose lands were occupied by the settlers, and especially considering the fact that many of the latter were then living in refugee camps in Tripura or internally displaced within the CHT, and therefore not in a position to provide evidence of their "possession" over the concerned lands. Writing about the CHT Accord of 1997, Dr. Amena Mohsin, a well-known and respected writer on the CHT, has stated that this process (which was proposed in 1992 during the rule of the BNP government under Khaleda Zia) was quite rightly resisted. She writes:

> " To any observer of the CHT issue it is crystal clear that peace in the CHT is largely dependent on the resolution of the land issue. The accord stipulates that land would be returned to the owners once their ownership rights can be ascertained. But in the HT in areas where the Hill people practice jhum cultivation, there is no conception of private property. Land is communally held and individuals have rights to usufructs only. Under such circumstances it is difficult to envisage as to how the Hill people would produce land documents of land ownership.
>
> " But [the survey] was then opposed by the PCJSS and the Hill people on the grounds that the Hill people do not have land documents; and the land records office in the Khagrachari district had been burned down, hence the Hill people were not in a position to prove their ownership rights.
>
> " The situation has remained unchanged. Yet the government and the PCJSS have now agreed to go ahead with the land survey. In this context the accord stipulates that in carrying out the survey the local and customary rights of the Hill people would be respected. If this turns out to be the case then it is difficult to see how the government can

[33] A cadastral survey is a detailed survey of the land conducted by Land Ministry officials and its reports usually contain information about the physical properties of the land (e.g. whether it is lowland or sloping land, whether it is wooded or not, etc) and about the occupants of the land.

> accommodate the Bengalis, for most of them have been settled on Khas land, i.e., government owned land, which the Hill people regard as their communal land. "[34]

Mohsin has very succinctly pointed out the political and ethnic dimensions that will inevitably be drawn in when any measures to restore the land rights of the indigenous people are attempted. She rightly draws attention to the difficulties in trying to "accommodate" both the indigenous people and the ethnic Bengali settlers. How this matter will be resolved, or perhaps to take a more objective view, addressed, remains to be seen. I share her concerns but I have certain difficulties in accepting some of the premises upon which her conclusions seem to be drawn.

Firstly, I feel that it needs to be understood that a significant extent of the indigenous people's lands that were taken over by the government-sponsored Bengali settlers concerned lowlands and other lands which were owned or occupied by individuals or families and were not communally held jumlands (swidden lands). Jum cultivation is nowadays largely confined to the remoter areas and steeper slopes, that held little or no attraction for the settlers, who were not used to highland methods of agriculture. The concern expressed by the JSS and other indigenous leaders with regard to the destruction of land records in Khagrachari (which is mentioned by Mohsin herself) is indicative of the fact that the dispossessed lands also included privately held lands of indigenous people. The fact is that, a growing number of indigenous people in the valley areas and in areas that have relatively good communication facilities have turned to non-traditional modes of livelihoods centering around private ownership of lands and market-oriented modes of land-use, such as tree and bamboo farming, horticulture and wet-rice agriculture. Thus there is a need to acknowledge the plurality of situations even among the indigenous communities.

But of course, there are also many cases of lands that are de facto treated as private property of indigenous people, although the land claims of these people may fall short of full ownership rights. And here, Mohsin's concerns are the same as mine.

Secondly, although I recognise the difficulties and complexities involved in actually implementing the various land-related aspects of the Accord, I feel that Mohsin seems to have disregarded the provision contained in the clause on the land commission (and not in the clause on the survey as mentioned by Mohsin) that rights based upon local customs, conventions, etc. will need to be accounted for. Therefore, there is room to argue that in accordance with the Accord, it is not obligatory that the dispossessed people would necessarily have to produce "documents of land ownership" to establish the soundness of their claims.

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[34] Mohsin, op. cit., pp. 114, 115.

As regards the survey, the Accord clearly stipulates that the survey would be conducted only *after* the land disputes are resolved, the refugees and displaced people are rehabilitated, the land rights of the indigenous people are secured through documentation and other measures and that too "in consultation with the regional council"; suggesting that if the regional council disagreed, then the survey work may not be started. It is true that such surveys contain a risk to those without landholdings or those who use lands on a communal basis, but it is equally true that a significant number of indigenous people are also keen to obtain title to lands that they use for horticulture or for tree and bamboo farming. Therefore, the interest of those, including indigenous farmers, in support of formalising their land rights through registration procedures (which may be facilitated by a survey) cannot be overlooked.

But for the greater interest, the survey should be delayed until after legislation is initiated to have these custom-based "commons regime" rights formally recognised by law. This applies to both swidden commons as well as communally managed forests, grazing lands and even water bodies that are used for fishing and for irrigation. And with a straight-forward interpretation of the clause referred to above, there is room to argue that these measures need to be undertaken before a survey is conducted. The JSS and the Government of Bangladesh have agreed in principle to have a survey conducted. But I have no information to suggest that the JSS has agreed to the conduct of a survey before the pre-conditions mentioned above are fulfilled. Therefore, I feel that Mohsin has not given the benefit of doubt to the JSS (or for that matter, to the Government of Bangladesh) in concluding that they have agreed to conduct a survey before fulfilling certain pre-conditions, such as those mentioned in the concerned clause of the Accord.

The Role of the Regional Council

I have so far not discussed the role of the CHT Regional Council with regard to land issues. This is largely because it is the district councils, and not the regional council, that are (to be) vested with direct authority over land issues and many other aspects of administration in the CHT. However, the regional council does have a most crucial role to play as regards land-related issues (and other matters), partly through its coordinating and supervisory authority, and more importantly, through its legislative prerogatives. The Accord states that the Government of Bangladesh will legislate on matters pertaining to the CHT "on the basis of discussions with, and on the advise of, the regional council."[35] The Accord also provides further that the regional council may also, of its own volition, request, and recommend to, the national government, to initiate legislation to remove inconsistencies between existing laws (such as the CHT Regulation and the Local Government Council Acts of 1989) or because it is felt necessary to amend a certain law that may have adverse effects on the welfare of the indigenous (officially "tribal") people, or for other reasons. [36] These provisions have been included in the CHT Regional Council

[35] Clause 13 of Part B of the Accord.

[36] Clauses 11 and 13 of Part B.

Act of 1998. It is difficult to predict how cooperative the Government of Bangladesh will be in allowing the regional council to exercise its legislative prerogatives in a pro-active manner, but potentially, the regional council has a very important role to play in initiating future legislation to deal with some of the problems that I have discussed above.

Conclusion

There are, of course, many other ways in which the Accord addresses land-related matters in a direct or indirect manner that have not been discussed in the foregoing sections. Similarly, there are many other aspects of land issues that are vital for the protection of the land rights of the CHT people, and in particular, the indigenous people, but have not been addressed at all or in an adequate manner in the accord. I would include among them the issue of unsustainable and inequitable development paradigms that have been continuously imposed upon the CHT, the absence of formal recognition of the customary and common land rights of the indigenous people, including rights over forest lands, whether they are "reserved" forests or other forests, the rights and needs of women with regard to land issues, and the environmental aspects of land management, among other matters. In concluding, I would like to briefly discuss some of these issues and try to assess the likely state of affairs in the near future in relation to them.

Prevailing Development Paradigms: Majoritarian & Elitist Perspectives

The CHT has been the scene of a great many externally-aided and/or externally conceived "development" projects that have dislocated its people and disrupted their lives, including forestry projects and programmes, the hydro-electric dam at Kaptai, agro-forestry projects, "collective farm" projects and so forth. Yet, in the midst of all these activities, the CHT people have carried on with their own work, and experimented with their own innovated techniques on co-operative systems, agriculture, forestry and agro-forestry – drawing upon traditional knowledge systems and local experiences – and established schools and dealt with their other problems from a community platform formed and learnt to develop self-reliant development interventions. Now that the CHT is again open to "development" work (restrictions on travel and other matters having been lifted after the signing of the "peace" accord), it is a matter of concern that the CHT people's ideas on "development" and socio-economic progress, especially as they relate to land-use, may be subverted and subsumed into decision-making processes in which they are only very marginal actors. Devolution of authority to self-government units in the CHT cannot by itself guarantee that externally-conceived and inappropriate development agendas will not be imposed upon the CHT. This is especially so when we consider the fact that the self-government units are likely to be financially dependent to a great extent upon external aid, whether it is from loans or grants. The situation is little different even if the funding comes from the national authorities that have little or no understanding of local needs and wants. Then there is also the problem of the local elite – whether indigenous people or otherwise – who may carry on with top-down approaches in their development planning or try to replicate development models

based upon experiences outside the CHT without necessary modifications upon consideration of the different circumstances prevailing in the CHT. This is a phenomenon which is also likely in the case of the development activities of NGOs, especially NGOs based outside the CHT, who are now free to start their activities in the CHT.

Mohsin also expresses her concern about opening up of the area for tourism.[37] If this means tourism with heavy investments (inevitably by non-local entities) along with luxury hotels, golf courses, gambling, and sex trade, then this will of course be extremely harmful to the interests of the people of the CHT and its natural environment. However, there is good reason to believe that the people of the CHT are conscious and organised enough to be able to resist the development of such modes of tourism in the region. If such a manner of tourism can be promoted so that it does not disrupt the cultural and social integrity of the people of the region, and is not disruptive of the environment, and provides an income to the people of region in an equitable manner, such tourism should of course be welcomed and encouraged.

Therefore, it is important to ensure that the people of the CHT - and especially the more marginalised sections of the CHT population – are able to build up their organisational skills, human development capacities, and achieve educational and social progress, and build up awareness about socially, culturally and economically disruptive development models, so that they do not have to suffer from imposed development ideas that give them little or no benefit.

Formal Recognition of Customary Rights

I have already mentioned this matter in some detail in the foregoing section and hence I shall not elaborate further on the matter, other than to reiterate that this is a most vital issue that requires the most attention of the CHT leaders and the Government of Bangladesh and other members of Bangladeshi society.

Land Issues and Women

This matter has not been directly addressed in the Accord. One can perhaps say that this has been addressed in an indirect manner to some extent, by providing a number of "reserved" seats for women both in the district councils and in the regional council. However, many feel – and I share their opinion – that these measures are not adequate to protect the rights of women with regard to political, social and economic issues. Unless and until women are able to achieve real empowerment, politically, socially and economically, their marginalised situation is bound to continue.

The changes in occupational patterns, including a shift from swidden agriculture, hunting, trapping and gathering, to market-oriented modes of agriculture have led to the marginalisation of

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[37] Mohsin, op. cit., p. 117.

women among indigenous societies. Whereas before, the role of women, particularly indigenous women, was not necessarily so marginal – except perhaps with regard to their role in political decision-making – under the present circumstances, especially taking into account the progresses achieved by women in the CHT with regard to education and social awareness, it is all the more important to ensure that their rights, needs and wants are treated in a just manner.

As in other parts of Bangladesh, inheritance laws in the CHT are still discriminatory towards women belonging to most of the ethnic groups in the CHT. I would not say that the absence of any mention about this issue is necessarily a weakness of the Accord. I say this because it is up to the different peoples concerned to initiate social reforms for the cause of women. It cannot be imposed, especially when we have regard to the right to self-determination of all peoples, as mentioned in the Charter of the United Nations and in the International Covenant on Economic, Social and Cultural Rights that has been recently ratified by the Government of Bangladesh. What the situation calls for, I feel, is to raise awareness about the issue, so that each people can deal with the issue in the manner of their choosing.

Environmental Issues

Environmental issues were not at all addressed directly in the Accord, but it is certainly a matter of serious concern in the CHT having regard to the problems caused by the Kaptai dam, endemic deforestation, soil erosion and landslides, pollution of lakes, rivers and aquifers (including their drying up) and other undesirable consequences of unsustainable use of natural resources in the CHT. I will just mention the shortcomings within the forestry policies that have emphasised on the raising of industry-oriented plantations with narrow genetic bases in the clear absence of any adequate measures to protect the remaining natural forests of the region and to encourage natural regeneration of the affected forest lands. I am told that the National Environment Management Action Plan (NEMAP) for the CHT region will be soon be commenced. I would like to hope that some of these matters are addressed adequately by this plan and that the process of formulation of the plan is democratic, transparent and respectful of the views of the people of the CHT.

Land Disputes

This matter, which I have referred to in detail in the previous sections, is undoubtedly the most difficult matter that requires a just settlement. One possible way to solve this problem in a reasonable manner would be if the settlers – or a significant percentage of them – sought to be rehabilitated outside the CHT on a voluntary basis. Because of the marginalised condition of most of these settlers, it is not unlikely that may agree to be rehabilitated elsewhere provided that the rehabilitation measures offered them a better life than what they have, at least with regard to economic opportunities.[38] Even today, the settlers' presence in the region requires to be subsidised by government rations of foodstuff (which no other section of the CHT population is provided with on a regular basis). The European Parliament is known to have offered financial

[38] For a more detailed discussion of this possibility, see Bhaumik, op. cit., pp. 188-191.

assistance in the event that such a process is agreed upon by the Government of Bangladesh.[39] However, it does not seem that the Government of Bangladesh has agreed to this proposal.[40] Therefore, some other way of dealing with this problem will eventually have to be found. Otherwise, the violation of the land rights of the dispossessed people will remain will unresolved. Perhaps NGOs and other sections of civil society could help work out a negotiated settlement in this regard, by being respectful towards the rights of the dispossessed people, and the rights of the settlers, who too have been merely used as pawns during the internal conflict, and who are as poor and as marginalised as the people that they have dispossessed.

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[39] *European Alliance with Indigenous Peoples (EAIP) Newsletter,* Issue 3, December, 1996, p. 3.

[40] It may be mentioned here that the JSS has claimed that they had an unwritten understanding with the Government of Bangladesh to repatriate the settlers in their original homes outside the CHT or to otherwise rehabilitate them outside the CHT. The Government of Bangladesh has flatly denied the existence of any such understanding.