



“Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”

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Agreement between State and Indigenous Peoples: Implementation Status of the Chittagong Hill Tracts Accord, Bangladesh

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The views expressed in this paper do not necessarily reflect those of the OHCHR.

A) Background:

This paper articulates the problems, challenges and context of implementation of the Chittagong Hill Tracts (CHT) Accord that was signed between the government of Bangladesh and CHT based indigenous political party Parbatya Chattagram Jana Samhati Samiti (PCJSS) on 2nd December 1997. 15 years after the signing of the Accord, it has become convenient to overlook the whole political, economical, social and cultural context of indigenous Jumma¹ peoples in the CHT, as well as the qualitative and quantitative changes that have occurred in the region. This paper aims to address the burning issues of concern to the indigenous Jumma peoples in the CHT, the relevant legal and policy frameworks developed in relation to these concerns and recommendations for the national and international communities that should be strongly considered for promoting and protecting the rights of indigenous Jumma peoples in the CHT.

The majority of Bangladesh's 160 million population is composed of ethnic Bengalis. Approximately 3 million are indigenous peoples belonging to more than 54 different ethnic groups². The total population of CHT is 1,342,740 (census report of 2001) out of that 736,682 were Jumma people and 606,058 were Bengali people. However, indigenous Jumma peoples believe that their population is more than 800,000.

The "CHT" is topographically, demographically and culturally very different from the rest of the Bangladesh. Even politically and administratively, the region is unique within the country with its special semi-autonomous structure, including a partially formalized indigenous juridical system³. During the British colonial period (1860-1947), the CHT was regarded as an 'Excluded Area' under CHT Regulation of 1900, in order to protect the indigenous Jumma people from economic exploitation by non-indigenous peoples and to preserve the indigenous peoples' socio-cultural and political institutions based on customary laws, community ownership of land, etc.

During the Pakistani period (1947-1971), the entire CHT region was thrown open for unrestricted migration and acquisition of land titles by non-indigenous people, in violation of the letter and spirit of the 1900 Regulation. However, Pakistan recognised CHT region as an 'Excluded Area'.

The Fifteenth Amendment to the Constitution refers to the indigenous peoples as 'tribes', 'minor races' and 'ethnic sects and communities'⁴. Although several laws acknowledge the CHT peoples as "indigenous", this was not formally acknowledged in the Constitution, which was adopted in 1972. The indigenous Jumma people in CHT have been termed as Bangali people through the 15th Amendment of the Constitution adopted in June 2011.

B) Main Features of the CHT Accord:

Part A, under the heading "General", recognizes the CHT as a tribal inhabited region. It deals with commitments to pass legislation and sets out details of the composition of a committee to oversee the implementation of the Accord;

Part B, entitled "CHT Local Government Council/Hill District Council", details proposed legal amendments to strengthen the existing powers of the district councils and to extend their jurisdiction to include new subjects;

¹ The word "Jumma or Jummas" is originated from small thirteen Indigenous ethnic minorities groups in Chittagong Hill Tracts of Bangladesh. They are Chakma, Marma, Tripura, Tangchangya, Murang, Boam, Khumi, Kyang, Chak, Lushai, Reang, Usai and Pankho. All of those Indigenous groups together are called as Jumma, accordingly their own cultivating system. Source: http://en.wikipedia.org/wiki/Jumma_people

² Human Rights Report 2011 on Indigenous Peoples in Bangladesh, edited by Dr. Dalem Chandra Barman and Mong Sing Neo, Kapaeeng Foundation, Dhaka, Bangladesh

³ HR/GENEVA/TSIP/SEM/2003/BP.8: The International Character of Treaties with Indigenous Peoples and Implementation Challenges for Intra-State Peace and Autonomy Agreements between Indigenous Peoples and States: The Case of the Chittagong Hill Tracts, Bangladesh by Raja Devasish Roy

⁴ Indigenous World 2012 Bangladesh Chapter, publish by IWGIA

Part C, entitled “CHT Regional Council”, lays down the composition of a new unit of regional authority to be constituted as a regional council incorporating the three districts of the area. In the case of both the regional and the district councils, the chairperson and two thirds of the seats are to be reserved for indigenous peoples;

Part D, entitled “Rehabilitation, General amnesty and other matters”, addresses a wide range of issues, including the rehabilitation of returnee refugees, internally displaced persons and indigenous fighters, resolution of land disputes through Land Commission, demilitarisation of the region, cancellation leases, settlement of land to landless Jummas etc.

C) CHT Accord under the national legal and policy framework

The CHT Accord refers to several measures on substantive legislation in the region, including the enactment of new laws and the amendment of existing laws, regulations and practices to comply with the Accord on the basis of advice and recommendations of the CHT Regional Council. A positive arrangement is that, in line with this provision of the Accord, the Government passed the CHT Regional Council Act of 1998, the Hill District Council (amendment) Act of 1998, the CHT Land Disputes Resolution Commission Act of 2001 and the CHT Regulation (amendment) Act of 2003⁵.

The CHT Accord recognized this special status of the region with the introduction of the CHT Regional Council (CHTRC) as an apex body of this administrative system. It was vested with the power of supervision and coordination of the three Hill District Councils (HDCs), law and order, general administrations, development programmes, CHT Development Board (CHTDB), Coordination of NGO activities, disaster management and relief operation, traditional and social justice and the power of giving license for heavy industries⁶.

In the Fifteenth Amendment to the Constitution adopted in June 2011, the government did not provide constitutional safeguard to the CHTRC Act 1998 and three HDC Acts 1998 enacted as per CHT Accord. It is mentionable that during the signing of the Accord, government said that government could not provide constitutional recognition/safeguard to the CHT Accord, as at that time, Awami League-led government did not have two-third majority in the parliament to amend the constitution. However, if Awami League gets two-third majority in the parliament, then it would provide constitutional recognition/safeguard to the Accord. Indigenous peoples demanded to review the 15th amendment to the constitution, which did not recognise them as ‘indigenous peoples’ and their fundamental rights. They urged the government to ensure indigenous peoples’ right to land along with their political, economic, cultural and social rights in the constitution.⁷

D) CHT Accord Implementation Status

The people of the Chittagong Hill Tracts have learned, through the hard way, that there are no effective mechanisms available at the national, regional or international levels that can be invoked to help implement the unimplemented provisions of the 1997 Accord. It is true that national judicial mechanisms have not been fully explored in this regard, but even in the best conceivable scenario, the remedy would be limited to only implementable “rights” within the recognized juridical categories. Moreover, failure in a legal action would also most likely prevent political action on the

⁵ Annual Human Rights Report 2011, Kapaeeng Foundation, Part VII – present state of the Implementation of the CHT Accord of 1997.

⁶ PCJSS Report on the 15th CHT Accord Anniversary on the status of the CHT Accord Implementation

⁷ Sanghati 2011, Bangladesh Indigenous Peoples Froum, Dhaka

part of the government, since the government would then no longer feel itself legally bound to carry out the concerned acts or omissions⁸.

The CHT Accord had ended the decades long fierce armed conflict between the Jumma people and government of Bangladesh. This Accord was hailed and welcomed by not only the Jumma people of CHT and democratic and progressive political parties of Bangladesh but also by the United Nations, European Union and many democratic governments of the world including many national and international organizations, agencies and individuals as well. Sheikh Hasina, then and present Prime Minister even was honored with the *UNESCO Houpet-Felix Boigny Peace Award* in 1999 for signing this Accord.⁹

The Awami League government implemented a few provisions including enactment of laws as per CHT Accord. Among them, passing of CHT Regional Council Act and HDC Acts in Parliament, establishment of CHT Affairs Ministry, repatriation of Jumma refugees from Indian State of Tripura, withdrawal of around 66 temporary camps etc. are most remarkable provisions.

However, the main issues on which preservation of status of tribal-inhabited region, introduction of special governance system in CHT with CHTRC and HDCs, resolution of land disputes depend are still outstanding. Several critical CHT Jumma indigenous peoples issues have still not been adequately addressed and important issues of the CHT Accord have to be implemented. As a whole, most of the provisions, especially the main issues of the Accord, have either left unimplemented or partially implemented. If we consider this initiative as a positive arrangement by the states, the crucial points still remain the trust and effectively implementation of the Accord. Some of the key areas that is very crucial in relation to promote, protect and recognition of Jumma indigenous peoples in CHT.

Despite its prioritized commitment in the Election Manifesto¹⁰ and continued strong demand of the peoples of the CHT and the civic society of the country, the government has not come up with a time-framed 'Road Map' directing to implementation of the Accord. The present states of implementation of main provisions of the CHT Accord are as follows:

- (1) There has not been any initiative by the government so far to uphold the Jumma national identity and to protect the special character i.e. the tribal character of the CHT region. Rather, efforts have been made up to obliterate the "special character" of the region by adopting various programmes, such as, rehabilitation of Bengali settlers in the CHT.
- (2) The CHTRC Act and HDC Acts were passed in 1998 as per CHT Accord, but these Acts are yet to be executed fully and hence the CHTRC & HDCs introduced under the special governance system is yet to be institutionalised. No measures leading to holding elections of the HDCs and CHTRC have so far been initiated, and to that end, the Election Rules and the Electoral Rolls Rules also have not yet been formulated as per the terms of the Accord. Even no single subject has been transferred to the HDCs during the period of the present government.
- (3) Withdrawal of temporary camps is yet to be made completely and the deadline for this goal is yet to be fixed. Rather, Operation Uttoron of military forces was imposed in 2001. Out of more than 500 camps, only 66 including 35 camps and a brigade headquarters withdrawn

⁸ HR/GENEVA/TSIP/SEM/2003/BP.8: The International Character of Treaties with Indigenous Peoples and Implementation Challenges for Intra-State Peace and Autonomy Agreements between Indigenous Peoples and States: The Case of the Chittagong Hill Tracts, Bangladesh by Raja Devasish Roy

⁹ Statement by Mangal Kumar Chakma on Agenda Item: 4(b) Review of development pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous people: Indigenous Peoples and Conflict Resolution at 22nd Session of United Nations Working Group on Indigenous Population held 19-23 July 2003 in Geneva.

¹⁰ Awami League stated in 2008 election manifesto that; 18 (2) "The 1997 Chittagong Hill Tracts Peace Accord will be fully implemented. More efforts will be directed toward the development of underdeveloped tribal areas, and special programmes on priority basis will be taken to secure their rights and to preserve their language, literature, culture and unique lifestyles"

during the period of present government have been withdrawn since signing the Accord. Rather than diminishing the powers of the military in accordance with the Accord, there has been a further strengthening of the control of the military. This includes the retention of “Operation Uttoron”, which is an executive order conferring rights on the military to intervene in civil matters beyond their proper jurisdiction.¹¹ Under the de facto military rule ‘Operation Uttoron’, the military forces continue to remain the supreme authority in the region, as they did during pre-Accord period.

(4) The Land Commission was formed and its mission to resolve land disputes is yet to be started. CHT Land Dispute Resolution Commission Act passed in 2001, but 23 issues contradictory to CHT Accord were included in this Act., On account of the dictatorial and discriminatory attitude of the Commission's non-indigenous chairperson, there are challenges, but it is hoped that these dysfunctionalities will be addressed through legal amendments and the appointment of a more competent and impartial person as chairperson. Although the law establishing the Land Commission still awaits further amendment to make it conform more faithfully to the provisions of the 1997 Accord, it encompasses several of the principles mentioned in article 27 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹²

(5) Since reconstitution of the Task Force during present grand alliance government, no development in rehabilitating the internally displaced Jumma families, returnee Jumma refugees and ex-combatants of PCJSS has been achieved. The government side is still following the previous policy to rehabilitate Bengali settlers in CHT identifying them as IDP (Internally Displaced Persons) which is contradictory to the CHT Accord and the spirit of the movement of the indigenous people. As a result, the rehabilitation process of the tribal IDPs has ended in stand still.¹³

(6) Land leases given to non-residents for rubber plantation and horticulture are yet to be cancelled. Rather, Deputy Commissioners continue to give hundred of acres of land in lease to the non-tribal Bengalis in violation of the CHT Accord. It is significant that huge tracts of land were given lease to non-indigenous outsiders in 1980s and 1990s for rubber plantation and other commercial purposes. During the period of present government, out of more than 2000 plantation plots, about 593 plots so far have been cancelled. But to the deep frustration of the CHT people, the Deputy Commissioner of Bandarban district has recently reinstated most of the plots to the owners.¹⁴

(7) As per CHT Accord, voter list in CHT region was not prepared only with the permanent residents of CHT. Rather, non-residents were also included in the voter list. In addition, provision for appointment of all post in CHT among from permanent residents of CHT is yet to be executed.

(8) On 13 April 2010, the High Court of Bangladesh declared the CHT Regional Council Act of 1998 unconstitutional and illegal in that it violated the sanctity of a unitary state. In its judgment, the High Court also declared a few sections of the three amended HDC Acts of 1998

¹¹ Statement on Agenda Item 8: Human rights by Submitted by Windel Bolinget on behalf of Asia Indigenous Peoples Caucus at 11th Session of the United Nations Permanent Forum on Indigenous Issues held on 7-18 May 2012 at United Nations HQs in New York

¹² Statement on ‘Agenda Item 8: Future Work of the Permanent Forum’ by Raja Devasish Roy, Member, UN Permanent Forum on Indigenous Issues at 10th Session of the United Nations Permanent Forum on Indigenous Issues held on May 16-27 2011, United Nations HQs, New York

¹³ BANGLADESH: Indigenous people and religious minorities still affected by displacement, International Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), Geneva, Switzerland, 16 July 2009; Web: www.internal-displacement.org

¹⁴ Study on the status of implementation of the CHT Accord of 1997 submitted by the Special Rapporteur at the tenth session of the UN Permanent Forum on Indigenous Issues held on 16-27 May 2011 at UN HQs in New York

illegal and unconstitutional following the submission of a writ petition filed in 2000. The Government appealed the decision and the judgment was stayed by the Appellate Division of the Supreme Court pending hearing of the appeal.¹⁵ However, government found more inactive to move the appeal hearing.

E) UNPFII's Study on the Status of Implementation of the CHT Accord of 1997

The United Nations Permanent Forum on Indigenous Issues (UNPFII), its ninth session in 2009, appointed Mr. Lars-Anders Baer, then member of the UNPFII, as Special Rapporteur to undertake a study on the status of implementation of the Chittagong Hill Tracts Accord of 1997. The Rapporteur visited Bangladesh in September 2010 where he met with various Government officials, including the Minister for Foreign Affairs and the State Minister of the Ministry of Chittagong Hill Tracts Affairs. He submitted his study report at the 10th session of the UNPFII held at UN headquarters in New York on 16-27 May 2011.¹⁶ UNPFII adopted following recommendations following the Study-

“102. The Permanent Forum takes note of the study by Lars-Anders Baer on the status of the implementation of the Chittagong Hill Tracts Accord of 1997 (E/C.19/2011/6). The Permanent Forum also takes note of the concerns raised by the representative of the Government of Bangladesh, as well as other Governments, indigenous peoples' organizations and non-governmental organizations, during the discussions at the tenth session. Further, the Permanent Forum notes the steps taken by the Government of Bangladesh to implement the Accord. The Permanent Forum recommends¹⁷ the following:

- (a) That, consistent with the code of conduct for United Nations peacekeeping personnel, the Department of Peacekeeping Operations prevent military personnel and units that are violating human rights from participating in international peacekeeping activities under the auspices of the United Nations, in order to maintain the integrity of the indigenous peoples concerned;
- (b) That the Government of Bangladesh declare a timeline and outline modalities of implementation and persons and/or institutions responsible for implementation;
- (c) That the Government of Bangladesh undertake a phased withdrawal of temporary military camps from the region and otherwise demilitarize the region, consistent with the safeguards of the peace accord, which will contribute to the ultimate objective of peace and economic and social development, and improve the relationship between indigenous peoples and the Government of Bangladesh;
- (d) That the Government of Bangladesh establish a high-level, independent and impartial commission of enquiry into human rights violations perpetrated against indigenous peoples, including sexual violence against women and girls, and prosecute and punish the perpetrators, as well as provide reparations for the victims concerned.

103. The Permanent Forum recognizes the opportunity created by the consultations on constitutional amendments in Bangladesh and encourages peaceful dialogue between the Government and indigenous peoples aimed at implementing the Chittagong Hill Tracts Accord and addressing the substantial concerns raised in the report and during the tenth session of the Permanent Forum, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.”

¹⁵ Report on Implementation of CHT Accord 2011, PCJSS, Rangamati, Bangladesh.

¹⁶ UNPFII's Study on the Status of Implementation of the CHT Accord of 1997 and Statements delivered at the UNPFII's 10th session on the said Study, edited by Mangal Kumar Chakma, Kapaeeng Foundation and Association for Land Reform and Development (ALRD), Dhaka

¹⁷ UNPFII 10th session report: E/2011/43-E/C.19/2011/14. Adopted at Economic and Social Council on July 29, 2011.

F) Conclusions and recommendations:

Full and speedy implementation of the CHT Accord, as well as recognition of indigenous people's rights and their existence in the Constitution is most crucial for indigenous peoples in relation to their human rights and fundamental freedoms in Bangladesh. This recognition will may help to improve the situation of indigenous peoples through respecting their individual and collective rights, create a positive environment for full and effective participation, and moreover offer a space for the free prior and informed consent in any development activities. In this regard, recommendations of 10th session of the UNPFII on the CHT should be taken into account for full and effective implementation of the CHT Accord.

Bangladesh has ratified several international human rights treaties, including the International Labour Organization (ILO) Convention on Indigenous and Tribal Populations of 1957 (Convention No. 107), the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The implementation of those ratified key international human rights conventions would help to promote and protect the rights of CHT Jumma indigenous peoples.

The peaceful resolution of conflicts is of vital importance in the process of protecting the rights of indigenous peoples. The CHT Accord can serve as a role model for other countries and regions, at least with regard to its contents. The CHT Accord provides basic rights to indigenous Jumma peoples in the CHT, and thus it needs to be given priority with an aim to build confidence among the indigenous peoples as this will also help to overcome the lack of trust between government and CHT Jumma indigenous peoples.