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

Geneva
16-17 July 2012

Organized by the Office of the United Nations High Commissioner for Human Rights

Promoting Partnerships in Implementing Intra-State Autonomy Agreements:
Lessons from the Chittagong Hill Tracts, Bangladesh

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# GLOSSARY

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>CHT</td>
<td>Abbreviation of Chittagong Hill Tracts. Semi-autonomous region in southeastern Bangladesh, comprising three administrative districts, bordering India and Myanmar (former Burma)</td>
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<td>CHT Accord of 1997</td>
<td>The agreement of 1997 between the GOB and the JSS. Also known as the &quot;peace treaty&quot;.</td>
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<td>CSOs</td>
<td>Civil society organizations and groups</td>
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<tr>
<td>ECOSOC</td>
<td>Economic and Social Council, United Nations</td>
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<td>EMRIP</td>
<td>UN Expert Mechanism on the Rights of Indigenous Peoples</td>
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<td>GOB</td>
<td>Government of Bangladesh</td>
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<td>JSS</td>
<td>Commonly used acronym for Parbatya Chattagram Jana Samhati Samiti or Jana Samhati Samiti, the major political party of the indigenous peoples of the CHT, under whose leadership an armed struggle for self-rule was conducted from the early 1970s up to 1997, when an accord was signed.</td>
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<td>NGOs</td>
<td>Non-governmental organizations</td>
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<td>UNPFii</td>
<td>United Nations Permanent Forum on Indigenous Issues</td>
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<td>SRIP</td>
<td>UN Special Rapporteur on Indigenous Peoples</td>
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<td>UNDRIP</td>
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Promoting Partnerships in Implementing Intra-State Autonomy Agreements:
Lessons from the Chittagong Hill Tracts, Bangladesh

Raja Devasish Roy

ABSTRACT
This paper attempts to draw some lessons in building sustainable partnerships in implementing political agreements between indigenous peoples and states, drawing upon lessons from the Chittagong Hill Tracts (CHT), Bangladesh. The paper explores the different avenues that indigenous peoples of the CHT have explored, and the partnerships and alliances they have forged, within the country, and at international levels, with governmental bodies and individuals, and with non-governmental and other civil society bodies and individuals, to help implement the aforementioned agreement.

INTRODUCTION
On 2 December, 1997, the Government of Bangladesh ("GOB") and the Parbatya Chattagram Jana Samhati Samiti ("JSS"), the major political party of the indigenous peoples of the CHT, signed a historic political agreement, to end the ensuing conflict between the GOB and the guerilla forces of the JSS and to strengthen the self-government system of the CHT. However, crucial provisions of the agreement (generally called the “CHT Accord of 1997”) remain “unimplemented or only partially implemented, including some critical clauses such as the settlement of land disputes, demilitarization and the devolution of authority to local institutions” (Baer, 2011: 3).

In the context of the “treaties, agreements and other constructive arrangements” between states and indigenous peoples referred to in the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP"), the 1997 Accord is clearly an “agreement", while it also has several features of a “treaty”. Important legal instruments on the CHT, which expressly or implicitly contain the assent of the indigenous peoples – such as the British-time CHT Regulation of 1900 and the post-Accord laws of 1998 on the CHT Regional Council and Hill District Councils - may be regarded as 'other constructive arrangements'. It is noteworthy that the CHT indigenous peoples also had treaties between sovereigns, including the treaty between the Chakma king and the British Governor General, in 1787 (Roy, 2007: 119).

The indigenous peoples’ institutions, political parties and other organizations, occasionally in concert, but more often through diverse groupings, have forged alliances with governmental leaders and officials, national and international NGOs and other civil society organizations and groups (“CSOs”). Through these alliances, they have sought to promote implementation of the accord through lobbying and advocacy at national and international levels. The following is an account of some of these efforts and the challenges faced thereby, with occasional references to comparable


2 The author is the traditional Chief of the Chakma in the Chittagong Hill Tracts, Bangladesh, a barrister (Advocate, Supreme Court of Bangladesh) and a member of the UN Permanent Forum on Indigenous Issues.
processes in other countries.

IMPLEMENTATION: EXISTING PROVISIONS & MAJOR OMISSIONS OF THE CHT ACCORD
The 1997 Accord provides for a committee to oversee the implementation of the accord, headed by a nominee of the prime minister and including the president of the JSS. However, very little seems to have been achieved by the committee, hindered, among others, by the very few times that it has met since its inception (Baer, 2011: 9). A major weakness of the structure of the committee is that, while it includes the parties to the accord, it is not independent of them. Thus, the presence of an independent third party, to arbitrate and/or mediate enforcement, was not contemplated. In contrast, the autonomy package on South Tyrol, Italy, of 1969, is protected by a bilateral treaty between Italy and Austria, which is regarded to have led, ultimately, to “full implementation” (Woelk, 1997: 163). Another omission in the CHT case is constitutional safeguards in support of the accord. In contrast, a positive example of the constitutional entrenchment of the provisions of an accord is the case of Mizoram State in Northeast India, which involved constitutional recognition of several crucial features of the Mizo Accord of 1986 (Nunthara, 2002). It is believed that the absence of clauses on third party mediation and on constitutional entrenchment have “greatly contributed to the failure to implement [the CHT Accord] properly” (Boltjes, 1997: 13). Third party mediation is believed to help maintain parity in a relationship that is often asymmetrical, and helps “prevent imposition of solutions by one party on the other…” (Boltjes, 1997:21).

LOBBY & ADVOCACY WITH THE GOVERNMENT OF BANGLADESH: SEARCHING FOR “CARROTS & STICKS”
Facing such a stalemate, the indigenous peoples of the CHT have explored other ways of pressurizing the GOB, through positive inducements (“carrots”) and through other means of pressure (“sticks”). They have found, however, that there were hardly any negative sanctions or ‘sticks’ available. The main guerrilla force – Shanti Bahini - had disbanded and de-commissioned. The indigenous peoples’ small population, and commensurately weak electoral, and economic, clout further hindered effective action. The only other viable ‘stick’ that was available was the monitoring of human rights by United Nations bodies and national courts of law and human rights institutions.

While international supervision of human rights in Bangladesh has no doubt added to some amount pressure on the GOB to help check human rights abuses, international treaty law cannot be directly invoked in national courts in Bangladesh, unlike in some jurisdictions in the Americas. Moreover, organizational and capacity shortcomings of indigenous peoples and supportive NGOs and CBOs has led to a disproportionately low level of engagement with mainstream UN human rights bodies, including treaty monitoring bodies, in comparison to indigenous peoples-related UN bodies like the PFii, EMRIP and SRIP, all of which bodies have their own limitations in promoting human rights at national levels. The National Human Rights Commission in Bangladesh – although composed of persons with integrity – has been largely sidelined and marginalized by the executive organ of the government. Proactive litigation in the Supreme Court of Bangladesh has been seldom invoked, demonstrating a lack of confidence in the apex court. Nevertheless, engagement in the arena of human rights is among the few avenues left to the indigenous peoples, given their marginality in mainstream political processes. At least here the field is somewhat more “level”.

An intra-indigenous political, and often violent, conflict has prevented a united stand. The JSS and other political groups’ mass demonstrations, strikes and other civic action did lead to considerable
mobilization, but their direct impact on policy-level changes seems to be minimal and clearly inadequate. This is not surprising, given the inherent asymmetry in state-indigenous relations, in Bangladesh; a feature that is also common in most other parts the world. The situation in West Papua, Indonesia, shares glaring similarities with the CHT, with regard to militarization, non-devolution, human rights abuses, and so forth.

Activists in the CHT have also explored avenues of “positive and negative inducements of carrots, no carrots or big carrots – providing or withholding aid, loans or other trade, political office or financial benefits and opportunities – rather than sanctions and sticks” (Roy, 2007: 136). This is a more complex phenomenon, and requires more study to gauge its existing and potential value, but it is nevertheless another one of the few avenues left to the indigenous peoples to explore further.

LITIGATION IN THE SUPREME COURT OF BANGLADESH

Although the indigenous peoples did not invoke the jurisdiction of the Supreme Court of Bangladesh to seek implementation of the CHT Accord, they had to defend its provisions, when right-wing groups asked the court to declare the Accord and its consequent legislative provisions (in the nature of “other constructive arrangements”) ultra vires to the Constitution of Bangladesh. The High Court Division of the Supreme Court ruled that the accord itself – being a “political”, rather than a “legal” instrument – was beyond the purview of judicial review of the court, but nevertheless struck down the law on the Chittagong Hill Tracts Regional Council (stating that the constitution did not recognize any “region” in Bangladesh, which was a unitary republic) and some other laws on the prerogative of the traditional chiefs and on affirmative action clauses reserving certain public posts for “tribals” (holding that they contravened provisions on “equal rights”). It remains to be seen how the apex court – the Appellate Division of the Supreme Court – deals with this issue when the appeal is finally disposed off.

SEEKING REDRESS AT INTERNATIONAL LEVELS

The people of the CHT and their allies have also participated in several United Nations and other international mechanisms and processes to pressurize the GOB, including in the Human Rights Council and the UN Permanent Forum on Indigenous Issue (PFii). At the tenth session of the PFii, a report on the status of implementation of the Accord was presented by a member of the Forum, highlighting the non-implementation of crucial provisions of the Accord and recommending adequate measures to be taken by the GOB (Baer, 2011). The author of the report is a member of an international watchdog body on the CHT, known as the CHT Commission, which has promoted the implementation of the accord since the early 1990s.

A representative of the GOB attended the concerned session and stated that the Forum had no

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3 In Mohammad Badiuzzaman v Bangladesh & Others (Writ Petition No. 2669 of 2000) and Advocate Md. Tajul Islam v Bangladesh & Others (Writ Petition No. 6451 of 2007) a bench of the High Court Division of the Supreme Court of Bangladesh held a number of provisions of the Hill District Council (Amendment) Acts of 1998 to be ultra vires to the Equal Rights clauses of the constitution because, among others, the expression “backward sections” was not specifically mentioned or otherwise insufficiently clarified or reasoned through legislative and administrative measures (per Mr. Justice Syed Refaat Ahmed & Mr. Justice Moinul islam Chowdhury in judgment dated 12 and 13 April, 2010; reproduced in the author’s words). The same judgment also declared the CHT Regional Council Act, 1998 to be ultra vires and illegal in its entirety. The judgment has been stayed by the Appellate Division pending the determination of a Leave to Appeal petition.
jurisdiction to discuss the accord claiming that there were no “indigenous peoples” in Bangladesh.\(^4\) The Forum did not accept the GOB’s views, and instead endorsed several of the recommendations of the study in its report. Attempts by the GOB to have the concerned paragraphs of the report deleted by the UN Economic and Social Council (ECOSOC) failed. However, to what extent such recommendations - including those of the UN Human Rights Council and other UN human rights bodies – impact decision-making at national levels is difficult to gauge. Ultimately, perhaps, it is the efficacy of political advocacy at local and national levels that determines whether and to what extent such recommendations are heeded by national governments, such as the GOB.

**NATIONAL POLITICAL ENGAGEMENT TO IMPLEMENT PROVISIONS OF TREATIES & AGREEMENTS: BEGGING THE QUESTION?**

In a leading study on peace processes in several parts of the world, the authors came to the conclusion that there was no alternative to political advocacy to implement peace agreements. They state: “To make sure that agreements are fully implemented and sustained post-agreement political activity is required. The danger is that parties may wish to disregard or re-negotiate some provisions in an agreement that they find unpalatable…. The bottom line, however, is a strong political will to implement an agreement.” (Darby & MacGinty, 2000: 259).

While this observation is perhaps sound, to autonomist activists and students of peace processes and autonomy arrangements, this may well be regarded as “begging the question”. The whole idea of entering into treaties and agreements on autonomy and other self-rule arrangements is often rooted in the political marginality of indigenous and minorities groups vis-à-vis the state and the rest of the national population. In the case of the CHT, the autonomist movement converted into an armed struggle in the 1970s, only after its leaders had failed to achieve autonomy through peaceful and constitutional means, including through participation in the national legislative bodies, delegations to the head of government, peaceful strikes and demonstrations.

**ENGAGING “4TH PARTIES” TO FACILITATE IMPLEMENTATION**

Another process to facilitate implementation, as attempted in the CHT case, similarly to Muslim Mindanao, Philippines and Macedonia, is to provide a role to “fourth parties”, whose role is to provide financial, logistical, diplomatic and political support (Boltjes, 1997: 7). The UNDP has attempted to play such a role, through a special “post-conflict” project on the CHT, that provides support to the GOB and its CHT counterparts, including CHT-specific autonomous institutions, to implement projects on socio-economic development and capacity-building, among others. While such measures may be a “reductionist” manner of implementing provisions of an accord, these efforts may yet add up, in their totality, and play an important role in accord implementation. The role of UN agencies at country levels in monitoring and reporting on different aspects of implementation of peace agreements related to their area of work and expertise deserve to be promoted further, including in countries like (Boltjes, 1997: 44). Recognizing the importance of such interventions, the PFII at its 12th session in 2012, adopted the following resolution: “The Permanent Forum expresses concern over the continuation of conflicts in different parts of the world involving indigenous peoples, including areas where treaties, agreements and other constructive arrangements have been entered into, and urges dialogue and consensus-building to resolve such

conflicts, guided by the principles of the Declaration. It also urges the United Nations system, including country teams, to actively support and promote such processes of dialogue and consensus-building.\(^5\)

**PARTNERSHIPS & ALLIANCES ON THE CHT: AN OVERVIEW**

As mentioned earlier, engagement on the implementation of the CHT Accord, both nationally and internationally, has involved several actors, including the GOB, the JSS, indigenous peoples’ organizations and networks within Bangladesh and abroad, and Bangladeshi and international NGOs and CSOs. Some of the more effective partnerships and alliances are referred to below.

**Engagement with GOB Ministers & Other Leaders**

Apart from attending the sittings of the Accord Implementation Committee, indigenous leaders have engaged with GOB ministers, prime ministerial advisers and other senior members of the government. Sometimes, quiet lobbying and informal discussions have facilitated legislative and policy measures in a limited manner. Progressive members of the cabinet have sometimes publicly expressed their support for implementation, giving positive signals to the state bureaucracy, which has generally been unsympathetic or apathetic to human rights and devolution measures.

**Alliance with Bangladeshi Parliamentarians**

Progressive Members of Parliament, both from left-leaning parties—although few in number—and from the ruling party, the Bangladesh Awami League, have come forward to help muster support for the CHT peace process. The formation of an *Indigenous Parliamentary Caucus*, chaired by a prominent left-leaning MP, is one such positive development.

**Engagement with National Human Rights Commission & Other Governmental Bodies**

The National Human Rights Commission of Bangladesh, a recently formed body, particularly through its outspoken chairperson—a former academic—has proven to be a strong voice in favour of the indigenous peoples, including in the CHT.

**Alliance with Indigenous Peoples from Other Parts of Bangladesh**

Ever since the declaration of the International Year of the World’s Indigenous People in 1992, and particularly after the signing of the CHT Accord in 1997, national organizations and networks of indigenous peoples from all parts of the country have been formed and mobilized to implement the CHT Accord and to promote constitutional and other rights of indigenous peoples. The aforesaid groups have actively participated in civic gatherings within Bangladesh and participated in international human rights and other processes, speaking out in favour of CHT and indigenous rights.

**Alliance with Bangladeshi Civil Society Organizations**

Alliances with progressive human rights and other NGOs and other national-level CSOs have gradually been strengthened. This has led to wider monitoring of human rights violations in the CHT, a larger volume of training, reporting and capacity-building work on CHT and indigenous issues, among others.

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\(^5\) UN Doc: E/2012/43E/C.19/2012/13, para 123.
Alliance with Bangladeshi Press & Media
Strategic alliances with the editors and journalists of widely-circulated newspapers, and journalists working for private television channels have led to more sympathetic reporting on CHT and indigenous issues than before. Surrounding the celebration of the International Day of the Indigenous Peoples on 9 August, indigenous activists and friendly NGOs and CBOs in Bangladesh have planned to engage friendly press and electronic media to provide the relevant air time and space to promote indigenous rights.

Alliance with International Civil Society Groups
Since the 1980s or so, alliances with international human rights organizations, groups and networks have grown and matured. These groups have been instrumental in raising concerns about the situation of human rights of indigenous peoples and on the implementation status of the CHT Accord. One key result of these alliances was the forming of an international watchdog body on the CHT, composed of widely respected individuals from Bangladesh and elsewhere, including parliamentarians, academics, human rights workers, indigenous leaders and others. Monitoring visits, meetings with government leaders, including the head of government, engagements with the press and media and publication of reports have been among the commission’s work.

Alliance with Indigenous Peoples from Other Parts of the World
Alliances with indigenous peoples from different parts of the world have constantly grown since the 1980s, when activists from the CHT started participating in international human rights processes. These have developed into strong alliances, involving indigenous institutions and organizations from different parts of the world. Strong support for the CHT peoples has been seen in several international gatherings, including at the 10th session of the UNPFii, when the study on the implementation status of the Accord was presented and discussed.

CONCLUSION: PROMOTING STRATEGIC & SUSTAINED INTERVENTIONS
While several of the alliances and partnerships referred to above have been instrumental in both promoting implementation measures and prevented a worsening of the human rights situation in the CHT, there is certainly much room for more effective interventions. Based upon the author’s interaction with CHT leaders, activists and allied NGOs and CSOs, the following are some of the ways in which the existing interventions may be made more concerted, effective and sustainable.

Engaging “4th Parties” to Create Conducive Conditions for Implementation

Invoking Provisions of the CHT Accord & International Treaties in Strategic National Litigation & Advocacy
Several of the rights contained in the CHT Accord, and in human treaties ratified or acceded to by Bangladesh are in conformity with basic human rights principles included in the national constitution. Strategic references to such national legal provisions may facilitate promotion of the Accord-based and other rights in both political advocacy and litigation in the apex courts.

Engagement with Treaty Monitoring Bodies
Although Bangladesh is a party to most of the major UN human rights treaties, engagement with these bodies has been extremely limited. This shortcoming can be and should be remedied.

Invoking Provisions of the UNDRIP
Several other provisions of the UNDRIP are closely related to the specific provisions on treaties, agreements and other constructive arrangements contained in UNDRIP. These include provisions on self-determination, the right to land, territories and natural resources, including effective remedies on land alienation, the right to maintain and strengthen indigenous political and juridical institutions, and the absolute prohibition against non-discrimination. Strategic invoking of these provisions, including provisions of UN treaties to which Bangladesh is a party, may well lead to at least incremental implementation of the provisions of the CHT Accord of 1997 and other human rights provisions.

Capacity-Raising of Indigenous Institutions, Organizations & Networks & Allied Groups
Most of the aforesaid interventions are dependent upon the extent to which the organizational strengths and capacities of indigenous institutions, organizations and groups may be strengthened, along with that of allied NGOs and CNOs. This in turn is dependent upon the mobilization of necessary funds from donor agencies and calls for synergetic alliances undertaking strategic interventions.

REFERENCES


