

Recognition, Reparation and Reconciliation: Chittagong Hill Tracts Accord 1997, Bangladesh¹

A. Background

1. The Chittagong Hill Tracts (CHT) is situated in southeastern Bangladesh and is home to 11 indigenous groups², numbering approximately 900,000 people, who differ markedly from the Bengali majority in language, culture, physical appearance, religion, dress, eating habits, architecture and farming methods. Prior to British rule, the Chittagong Hill Tracts was governed by comparatively non-formalized self-governance systems, which were considered to be independent. British influence over the region took place in a gradual manner, and during the period of British influence, the area had the special status of an autonomously administered region, safeguarded by the Chittagong Hill Tracts Regulation of 1900, which, inter alia, strictly controlled the entry and residence of non-hill people and barred the sale and transfer of land to non-indigenous peoples.
2. During the British colonial period and during the early years of Pakistani rule, the Chittagong Hill Tracts was recognized as a specially administered area³ under several constitutional dispensations, including the Government of India Act of 1919, the Government of India Act of 1935 and the constitutions of Pakistan of 1956 and 1962. In 1963, however, a constitutional amendment eliminated the special status and immigration restrictions. After Bangladesh became independent from Pakistan in 1971, the entity of indigenous peoples for regional autonomy and the restoration of the special constitutional safeguards were rejected when the first constitution of Bangladesh was adopted in 1972⁴. The rejection of constitutional recognition and many years of political, economic and social marginalization led the self-determination rights movement by the Parbatya Chattagram Jana Samhati Samiti (PCJSS) against the Government of Bangladesh in the early 1970s.

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² The 11 indigenous groups are: Bawm, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mro, Pangkhua, Tanchangya and Tripura

³ Referred to as “backward tract”, “excluded area” or “tribal area”.

⁴ UNPFII 2011, Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 submitted by the Special Rapporteur, UN Doc No E/C.19/2011/6

3. Government transmigration programme, carried out between 1979 and 1984, brought an estimated 400,000 Bengali settlers into the CHT, an area which already had a scarcity of land following the construction of the Kaptai dam. The Kaptai dam, completed in 1963, inundated 40 per cent of the arable land in the region and 100,000 indigenous peoples become displaced and among them 40,000 fled to India as refugees, 20,000 in Myanmar, and rest of the population were internally displaced and scattered in different places in the CHT region.
4. In between 1985 to 1997, a number of times had held negotiation between the Government and the Parbatya Chattagram Jana Samhati Samiti (PCJSS) for political and peaceful solution of the CHT problem. Finally, after a series of negotiation, on 2nd December 1997, an agreement was signed between the government and the PCJSS, which is known as the CHT Accord. The CHT Accord recognizes self-government, a separate administrative structure and 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. In addition, the Accord recognizes the CHT as a tribal inhabited region, acknowledges its traditional governance system and the role of its chiefs and provides building blocks for regional autonomy, withdrawal of all temporary camps for demilitarization, resolution of land disputes in accordance with existing laws, customs and practices, rehabilitation of returnee Jumma refugees and internally displaced families among other key issues.
5. As per CHT Accord, CHT Regional Council Act and three Hill District Council Acts were passed in 1998 in the Parliament. These Acts have not been implemented fully and properly. Rather, these Acts are being violated in various ways. Out of 33 subjects of the HDCs, only 17 subjects (including 10 subjects transferred before signing of the Accord) have been transferred partially to the HDCs so far. However, the most crucial subjects, such as, law and order of the district, land and land management, police (local), forest and environment among others are yet to be transferred to the HDCs.
6. Even after 21 years of signing of the Accord, no elections have been held in the three Hill District Councils. The Election Rules and Electoral Rolls Rules of three HDCs

have not been formulated till today. The main objective of refraining holding of elections of these CHT councils seems to be to by-pass the elections for the CHT institutions and deprive the CHT people from their political rights to franchise and access to representation. In fact, these interim HDCs work without any obligation and accountability to the people.

7. Further, demilitarization, resolution of land disputes, rehabilitation of indigenous refugees and internally displaced families, amendment of laws applicable to the CHT, among others, remain unimplemented.

B. Recognition: legal and policy framework a positive features

1. The government of Bangladesh has not been officially recognized to indigenous peoples as indigenous peoples, but there is a provision, which can refer for indigenous peoples. The amendment of the national constitution made in 2011, have referred to the Constitution article 23A as “tribes, minor races, ethnic sects and communities” (AIPP 2015, p.3). Article 23A, “the State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities”. Article 28 (4), “nothing in this Article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens”.
2. The preamble of the CHT Accord 1997 recognized CHT indigenous peoples as “Tribal”, and the provision stated that, *‘Both the parties, having considered the Chittagong Hill Tracts region as a tribe-inhabited region, recognized the need of preserving the characteristics of this region and attaining the overall development thereof’*.
3. Under the CHT Accord framework, the government has enacted the CHT Regional Council Act 1998, Rangamati, Khagrachari and Bandarban Hill District Council Act 1989 (amendment in 1998), CHT Land Dispute Resolution Commission Act 2001 (amendment in 2016).
4. The National Women’s Development Policy 2011 refers to indigenous women from “backward and small ethnic groups”.
5. The National Education Policy 2010 refers mother tongue education for indigenous children (however, termed indigenous children as small ethnic children).

6. The Small Ethnic Group Cultural Institutions Act 2010, only 27 indigenous groups from more than 52 for the entire country have been identified, being referred to as “small ethnic groups”.

Recommendations:

1. Recognition of indigenous peoples and constitutional guarantee of the CHT Accord 1997 will provide opportunity to participate equally on the life opportunities and the unique rights of indigenous peoples under the national legal and policy framework.
2. Inclusion of the CHT Regional Council Act 1998 and the three Hill District Council Acts 1989 (with amendment in 1998) in the First Schedule as ‘Existing Laws’ could be made to provide legal saving for these laws enacted as per CHT Accord.
3. Legal and administrative measures for preservation of the tribal-predominant feature of CHT region. In order to preserve the tribal pre-dominated characteristics of the region, on part of the government, it is urgent- to introduce a statutory measure to the Constitution stating that CHT is a region pre-dominated by multi-lingual hill/tribal people; to incorporate the words ‘or the hill people of Chittagong Hill Tracts’ immediately after the words “in favour of women or children or the backward sections of citizens” in Article 28(4) of the Constitution and to adopt and implement a plan for rehabilitation of settlers settled in 1980s in the plain districts.
4. Amendment of laws applicable in the CHT (Laws, Regulations, Rules, Orders, Circulations, Allocation of Business of various ministries) and the special laws relating to Chittagong Hill Tracts, such as, Chittagong Hill Tracts Regulation 1900, and the amendment of the (a) Chittagong Hill Tracts Regulation, 1900 (1 of 1900). (b) Police Act 1861. (c) Police Regulation. (d) Chittagong Hill Tracts (Land Acquisition) Regulation 1958.

C. Reparation

1. In between 1976 to 1997, 14 massacres took place against the CHT indigenous peoples. State (Bangladesh) committed those violations to indigenous peoples in the CHT. After the CHT Accord a number of human rights violations, at least 20 communal attacks, took place against indigenous peoples in the CHT that includes

torching and looting hundreds of indigenous houses, violence against indigenous women, arbitrary arrest and detention, extra-judicial killing among others.

2. Over the years, the government ran a number of negative policies against indigenous peoples in the CHT region as stated above in the background part, such as, imposition of de facto military rule 'Operation Uttoron' (Operation Upliftment) and demography engineering in the CHT region. Government policy and acts led massacres against the indigenous peoples and lost their land and territory, and become refugee in homeland, led to eviction, displacement and gross human rights violations. This has led to indigenous peoples in the CHT region to an uncertain future and driven to a serious threat of culture and identity.
3. The transmigration programme drastically altered the demographic composition of the CHT; the percentage of Bengalis in the region rose from 26 per cent in 1974 to 41 per cent in 1981 (in 1951 the Bengalis had accounted for only nine per cent of the population). In addition, Bengalis illegally occupied the lands of the indigenous peoples on a large scale. The forced relocation and illegal occupation of the lands of the indigenous peoples further escalated the conflict and this issue became one of the main sources of conflict between the indigenous peoples and Bengali settlers and the army. Over the years, indigenous peoples of the CHT region countered systematic and gross human rights violations that includes discrimination, inequality and ethnocide acts.
4. In between 1976 to 1997, 14 massacres took place against the CHT indigenous peoples, many indigenous peoples left their houses and villages, become internally displaced. Systematic violations of the human rights of the indigenous inhabitants in the region, mainly perpetrated by Bangladesh security forces, including unlawful killings, detention without trial, torture, rape, destruction of houses and property and forcible occupation of their ancestral lands. During the period of the conflicts, approximately 70,000 indigenous peoples fled to India and around 100,000 indigenous peoples became internally displaced.
5. The government have not made any acknowledge about this and nothing initiative for taking the role of legal obligation to repair the consequences of the gross human rights

violations in the past. Such wrongdoing activities has still been continuing that includes the continuation of the government sponsored fresh migration (Bengali settlers) in the CHT region.

Recommendations:

1. CHT Accord 1997 provides a recognition of the indigenous peoples' tradition, customs and norms in the CHT region. It recognized special administrative arrangement in the CHT region. In order to close the gap, government has initiated socio-economic development program through the administrative body and donor agencies. However, fully implementing the CHT Accord 1997 provisions and by taking initiatives in a political decision and solution, effective participation in the decision making on the matter affect them may prevent gross and systematic human rights violations in the CHT region.
2. Repairing could be started by acknowledging the injustice has been done against indigenous peoples in the CHT region in the past, which caused serious damaged of indigenous peoples lives, irreparable harm to victims. Indigenous peoples in Bangladesh have been facing human rights violations, political repression which are associated with historical injustice that involving non-recognition of the land rights, identity, and continue discrimination. In addition to, withdrawal the de facto military rule, rehabilitation of indigenous peoples who returned from being refugee and internally displaced because of the military atrocities, as well as by stopping political migration and rehabilitating Bengali outsiders outside of the CHT.
3. The reparation of the wrong doing may possible by restoring the civil and political rights of indigenous peoples, erasing unfair criminal convictions, and granting access to land and other social-economic opportunities including education. These measures can be taken by the government for indigenous peoples who are the victims of the gross human rights violations. The government can take initiative to provide special facilities for the victim families by recognizing the wrongdoing and providing them with a better future to overcome the enduring consequences of the violations. In this regard, such program can be implemented for indigenous peoples in the CHT region through the self-governance administrative programs. Reparation should be designed such a way that the indigenous peoples, the victims, have the rights to participate in

the decision making, and should be designed and implemented in ways that can transform unequal and unjust relations in the past.

4. Imposing militarization and indigenous peoples land grabbing are among others key wrongdoing and injustice by the government towards the indigenous peoples in the CHT region. Therefore, withdrawing all temporary camps and de facto military rule 'Operation Uttoron' from CHT according to the CHT Accord 1997 may establish peace and stability.
5. Rehabilitation of India-returnee indigenous refugees and internally displaced indigenous families will help overcoming the critical situation that created by the government activities over the last 40 years and that would cure the victims and take forward a sustainable development in the region, and ensure individual and collective human rights.
6. For the repairing the wrongdoing in the past, step requires by strengthening the special governance system in the CHT region in line with the CHT Accord, and so for that reason, holding election of three Hill District Councils and CHT Regional Council by preparing the voter lists in CHT with permanent residents of three hill districts indispensable.
7. The recognition of indigenous peoples land rights in the CHT region is crucial and the resolution of land disputes in CHT by following the norms, customs and traditions for ensuring confidence building and sustainable peace. The land disputes arose due to land grabbing by Bengali settlers and settlement of around half-million Bengalis.

D. Reconciliation

1. In Bangladesh, there is no reconciliation plan from the government in order to close the gap and prevent the wrongdoing against indigenous peoples in the CHT region. However, under the CHT Accord 1997 framework, it could be considered as a mean of closing the gap among the government, indigenous peoples and non-indigenous peoples living in the CHT region. For doing so, the government requires to fully implement the CHT Accord provisions, effectiveness of the indigenous people's

institutions including the traditional political institutions and enhance institutional integrity.

2. In the governance plan, the CHT Accord has introduced special governance system with the formation of the CHT Regional Council, CHT Hill District Councils, CHT Affairs Ministry, Taskforce on Rehabilitation of the Tribal Refugee and Internally Displaced Persons of the CHT, CHT Land Dispute Resolution Commission and reformation of the CHT Development Board under the CHT Regional Council. It has also introduced indigenous peoples' traditional and customary governance system in the CHT region.
3. Reconciliation process could have speeded up by implementing the CHT Accord 1997 provisions in the CHT region. This step includes legal and administrative steps for preservation of 'tribal-inhabited' region, devolution of powers and functions of the CHT Regional Council and three Hill District Councils and by transferring the subject matters, such as, general administration, law and order, police (local), land and land management, forest, environment, among others.
4. Reconciliation have to be done by implementing the self-determination rights of indigenous peoples over the issues, for example, deciding about the education, socio-economic development, cultural development, and identity among others.
5. The reconciliation needs engaging local indigenous peoples to close the gap. Under the CHT Accord framework, there is a provision that has mentioned to consult and decide for enacting any laws and policies that affect to indigenous peoples. This is the principles of the free prior informed and consent that has also outlined in the UNDRIP. In order to response of the needs of indigenous peoples, the reparation and reconciliation, the government needs to take into account the FPIC principles, for formulating operational bodies, agencies, laws and regulation that connected to indigenous peoples.
6. Reconciliation in Bangladesh for indigenous peoples including in the CHT region indigenous peoples requires initiating activities for building relationship and by providing positive information and deleting negative information about indigenous

peoples in the educational curriculum. In such activities, the mainstream population will have a positive attitude towards indigenous peoples at the national level. It will respect indigenous peoples' culture, bridge for building relationship between the indigenous and non-indigenous peoples in the country.

7. Indigenous peoples participation of equally and equitably in all areas of life without any restriction and limitation that includes political, social, economic and cultural opportunities. Indigenous peoples' individual and collective human rights including ensuring the non-discrimination and equality for indigenous peoples at all level will help closing the gap between the indigenous and non-indigenous peoples at the national level and the government could implement it by taking special measures and formulating law, policy and institution. Such action will take forward of promoting human rights of indigenous peoples and a better life; close the gap of misunderstanding about indigenous peoples' culture and their historical relationship with the land and territories.