

CHITTAGONG HILL TRACTS (CHT) LAND ISSUE: CHALLENGES AND WAY AHEAD

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INTRODUCTION

After World War II, peace agreement has been increasingly applied as an effective tool for resolving conflicts, when new nations began to deal with budding national identities and operating within them, in the context of potential conflicts due to heterogeneous demographic composition. Since independence, Bangladesh has been also struggling to integrate the people of CHT with mainstream national life and politics. After nearly two decades of effective counter insurgency operation the government succeeded in signing a Peace Accord on 2 December 1997 with Parbattya Chattagram Jono Songhoti Somity (PCJSS). In spite of progress in many areas, land issue seems to have slowed down the peace implementation process. Given the national socio-economic compulsions, Bangladesh can ill-afford to leave aside CHT issue in a stalemate. The account of Tribal growth and enjoyment of land right under customary law and special provisions made by the British, turned the Tribal increasingly xenophobic in regards to use of land by the people from plains or the government. This predicament created much discord in the past and likely to cast cloud over the peace implementation process. The subject therefore needs an in depth study highlighting gradual tribal ingress into this region.

As more and more people started settling in CHT, the British including subsequent governments had taken measures to exercise control through various rules and regulations and in the process caused alienation. However, formations of “Land Commission” and “Land Dispute Settlement Act-2001” under the 1997 Peace Accord are significant steps taken to resolve the land issue; but it remains flawed with legal constraints and lacked trust and confidence. Besides, difficulties in determining the land ownership, lack of mutually agreed land management system, several controlling authorities and legal ambiguities of the proposed land reforms are the major issues that need to be addressed.

Considering our foreign policy and global image, a solution to the land issue is of paramount importance. Besides the solution to CHT issue can offer host of economic benefits in the form of agriculture, fisheries, minerals, tourism opportunities and business with eastern Indian states. In the light of above, this paper aims to carry out an in depth study on the subject so that pragmatic measures are undertaken to resolve land issue for the peace and development of CHT.

HISTORICAL OVERVIEW OF THE TRIBAL INGRESS INTO CHT

Demographic Composition

According to 2011 census, the population of CHT is 15, 98,291. Apart from the Bengalis, 11 different tribes inhabit in CHT. These tribes are Chakma, Marma, Tripura, Mru(or Mro), Tanchangya, Bawm(or Bom), Khumi, Khyang, Lushai(or Mizo), Pankho and the Chak(or Sak) (Roy 2000, p.11). Of the total population, 47% of are Bengali, 26% of Chakma and 12% of Marma and 15% of comprises the rest of the tribes.

Evolution of the Tribal People

Earliest Tribal Influx in CHT. There is a place known as Chakomas in the central CHT, probably referring to the land inhabited by the Chakmas can be found in the map of Bengal drawn by Portuguese historian Joa de Barrows in 1540 AD. (Chakma 2006, p.22). According to Tribal mythology, one of the King's sons named Bijoygiri marched east from the foothill of Himalayan and eventually crossed the Meghna River and captured Arakan and developed the earliest Chakma settlement there. It was in the aftermath of Arakan-Burmese clash sometime in the beginning of 1660; the Chakmas crossed over Naaf River in the southern part of Chittagong and started living in Ramu. In the early 1600, some Tripura people from the Indian state of Tripura entered the present Khagrachari District and started living there.

Growth of the Tribal People during the Mughal Era. In 1658, Subedar Shah Suza of Bengal got defeated by his brother Aurangzeb in the battle of Khawaja in Uttar Prodesh and moved towards Chittagong to take shelter across the border via Anawara. Remaining soldiers had set up their tentacles in Ramu and started living there. Situation in Arakan had aggravated when Buddhist King Shanda Thudamma wanted to marry Suza's daughter. Number of skirmishes took place in different areas between the soldiers settled in Ramu and the Arakan soldiers. Afterwards, the soldiers went deep into the forest of Aikadam.

Expansion of the Mughals and Induction of Bengalis. On hearing Suza's assassination, Aurangzeb ordered Subeder of Bengal Shaista Khan to attack Arakan. Shaista Khan foresaw a potential threat from the Kingdom of Arakan, which had militarily developed with Portuguese expertise in firearms and artillery (Roy, 2010). Shaista Khan gained considerable advantage when conflict erupted between Arakan and the Portuguese. By promptly offering support, Khan managed Portuguese aid against Arakan and succeeded in capturing Sandwip and Chittagong by December 1665. During the same time number of cantonments had been established in Rangamati, Purangar and Kathgar areas. Around these cantonments had grown the Bengali community who are known as Adibashi Bengali. At this time, Shaista Khan's son Umed Khan was appointed

as the Nawab of Chittagong. From 1666 to 1724, many Commanders ran the Zamindari but Jalal Khan broke understanding with the Nawab and stopped paying tax. After 13 years in 1737, Shermosto Khan came forward and submitted to the Nawab of Chittagong and settled in Padua-Kodala.

Growth of Tribal People under the East India Company including the British Rule

East India Company. In 1710, when Chittagong with other territories were ceded to the Company, Chakma King Sher Daulat Khan and Arakan origin Bomang King Poang used to collect revenue for the company. The Magh and Khumis remained under the Bomang King. These Khumis also migrated to CHT from the Hills of Arakan and Akyab in the 17th century. When Chittagong was lost to the Mughals, the Burmese King Bodhpaya invaded Arakan in 1784 that caused another influx of Marmas. The northern Marmas came through the Matamuhuri valley and settled around Cox's Bazaar, Sitakunda before settling in the interior by 1826. The southern Marma came by a different route and at an earlier period (Mohsin, p.15). During the same period many Chakmas took refuge in CHT. Tanchangyas are a major branch of the Chakmas and came to CHT during the time of Chakma Chief Dhurum Bakhsh Khan. Another tribe named Lushai, migrated into CHT from the Lushai Hills of India.

British Government Rule. In 1860, CHT was created separating from greater Chittagong. Much later in 1881, Chakma Circle was formed with 1658 square miles of Rangamati, Bomang Circle with 1,444 square miles of Bandarban and Mong Circle with 653 square miles of Ramghar. After the introduction of 'Hill Tracts Manual -1900', Circles Chiefs divided their area into Mauzas and Paras under a 'Headman' and a 'Karbari' respectively. They were put to collect taxes, which were ultimately handed over to the DC by the Circle Chiefs.

Partition of 1947 and Subsequent Development. In 1956 Karnafuli Lake was acquired for construction of Kaptai Dam evicting the locals without compensation. Later on as the then East Pakistan got engaged in 1971 war, some Tribal including the then Chakma King Tridiv Roy opposed it. The King left Bangladesh for Pakistan and lived there until he breathed last in 2012. Many people who opposed the war fled across to India in anticipation of reprisal and those who stayed back took hold of the lands.

Movement for Autonomy and Aftermath

After 1971, Tribal leader M.N Larma demanded autonomy for CHT which was turned down on account of greater national unity. He then organized an armed wing titled "Shanti Bahini (SB)" transforming the Tribal grievances into the flame of insurgency. After 1975, finding remote possibilities of achieving autonomy through constitutional means, the SBs resorted to insurgency from 1976. As the government dispatched Bengali families to settle in CHT that generated ripples of repercussions. By introducing Hill

District Council (HDC) Act 1989, the Hill District Chairman has been vested with the power of issuing prior approval in case of any sale, purchase, transfer, or acquisition which created complicity.

The Peace Accord and the Current Situation

The CHT Peace Accord of 1997 has brought a significant improvement in law and order situation. Besides offering general amnesty to all insurgents nearly two thousands surrendered SB members received cash incentives and another 705 members got jobs in the Police. Tribal families from Tripura were brought back and rehabilitated. By now 235 security forces camps have been withdrawn, Ministry of CHT Affairs formed in 1998 and functioning under a Tribal Minister. The Regional Council (RC) has been formed since 1998 under Mr. Shantu Larma. As the contentious issues are settled and voter identity card issue is resolved, election for the Chairman and Members can take place. By now, 22 out of 32 subjects previously held by various ministries have been transferred to HDC. A Land Commission was formed in 1999 under a retired Justice and ‘CHT Land Dispute Resolution Act 2001’ was enacted to resolve the land disputes. With the setting in of peace, people found this as an opportunity to regain their lands that caused to ignite communal animosity at some places.

DIMENSION OF LAND ALIENATION IN CHT

An Overview of the Customary Land Management System

Prelude. The social and land management system of the Tribal people follow a traditional pattern which is quite different from rest of the country. The customary laws are recognized by CHT Regulation 1/1900, CHT Regional Council Act 1998, HDC Act 1989, CHT Land Dispute Settlement Commission Act 2001 etc. Even land right based on traditional laws has been recognized by the Peace Accord and the Constitution of Bangladesh.

Types of Lands and Principles of Customary Land Management System. According to the traditional law, the land ownership is collective or social and none can permanently own land. Their collective right prevails on – jhum land, crematorium, village forest, grazing ground, village land etc. They consider their land not transferable with money or any sort of remuneration. The land ownership, their management, and uses are based on verbal statement and are respected by all. These are administered by the Karbaries. The Tribal people lives within a particular geographical area. The jhum cultivators in discussion with the Karbari take approval for the jhum land on a yearly basis and then go for cultivation.

Land Ownership System. There are two systems in vogue in CHT as regards to land ownership as under:

Land Ownership based on Traditional Law. In this process Tribal people don't need any documents for the proprietorship. As such they divide the occupied land amongst themselves in consultation with the Karbari and the land remains under social ownership.

Land Ownership by Taking Lease from the Government. DC maintains a map in respect of Plain land, Hillocks and Fringe land. Each Mouza Headman receives a copy of the same map. For leasing out lands, DC's office scrutinizes applications and verifies the lands from the Headman. Then a holding number is issued using which the lease holder can pay tax. Then necessary endorsement is made in the document.

Changing Status of CHT Region under Different Eras and its Impact on Land Right

CHT lands are classified as (i) Reserve Forests (RF) under the Forest Department, or (ii) Unclassified State Forest (USF) under the office of the DC (Adnan & Dastidar, 2011, p.36). The USF contained all the common lands that the Hill peoples had been traditionally using for all purposes (khas land). CHT regulations provided limited rights to the Tribal people regarding use of USF (common land). Gradually the protection provided by the 1900 Act got chipped away under several reigns. Amendments to Rule 34 of the CHT Regulation in 1971 and 1979 lifted all restrictions on land settlements and leases to outsiders. (Adnan & Dastidar, p. 142) In 2008, as the government established civil courts and appointed judges including judicial officials in the district of CHT that helped in minimizing bureaucratic influence on Tribal issue. (Adnan & Dastidar, p. 39)

Introduction of Private Land Right in the CHT- Seed of Land Alienation

In the middle of the 19th century the British administration offered private land rights to the Tribal people for wet rice cultivation. The Tribal leadership who were associated with revenue collection also availed this privilege. Later the Pakistan and Bangladesh government also provided private ownership to the Tribal and Bengalis for timber, rubber, and horticulture plantations. During Bengali settlement from 1976 to 1980, Government offered them with some lands for making their livelihood.

Land Alienation – Nature, Process and Extent

In CHT (i) individual households, (ii) the village community, and (iii) the state can simultaneously hold distinct rights over the same land used by the Tribal for cultivating, grazing, common use, forests, etc. (Adnan & Dastidar, p. 42) Such co-existence of partially overlapping state, common, and private land rights is symptomatic of a situation of legal pluralism in the landed property system of CHT, which provides the potential

platforms for conflicts over land. However, the land alienation took any of the following forms:

State Acquisition of Common Land. Land acquired for the Forest Department, Kaptai Hydro-electric Project, and industries fall under this category. In the aftermath of insurgency, SFs also acquired chunk of so called common lands. Since 1989, the cumulative total of Common lands in CHT targeted for acquisition has amounted to a staggering 218,000 acres.

Occupation of Common Lands by the Bengali Interested Groups, Agencies, and Departments. Issuing of leases on CHT lands (mostly common lands) for private commercial plantations began from 1979. Although the Tribal people claims these lands to be theirs which is recognized by the DC's office. But to the government these are Khas lands or leasable state property.

Privatization of the Common Lands by the Individual Tribal People. Many Tribal elites own huge lands in CHT. Under the social land ownership system land administration is mostly done basing on verbal statements of the unskilled Karbaries and sometime based on the direction given by the Headman or Circle Chief. Thus alienation of Tribal land can also take place within the operation of traditional laws.

Acquisition of Bengali Settlers Lands by the Influential Bengali People. Influential people from outside CHT, gets hold on CHT land in exchange of their properties in Dhaka or elsewhere. Besides, people from the plains also obtain properties in someone's name who resides in CHT. While interviewing people on the subject, some of the trusted Bengali contacts confided this to the researcher.

Impact of Land Alienation. According to a study around 31% of households had to change their usual place of residence and average frequency of such displacements is 1.7. Around 38% Tribal people had to change their household at least twice and 20% were displaced more than once. On the other hand the Bengali household had to move from their first permanent residence about 1.5 times.

CHALLENGES ASSOCIATED WITH LAND ISSUE

Lack of Political will and National Unity

In spite of divergences in many areas, political parties need to be united on CHT issue. Without unity a broad based popular support wouldn't be forthcoming. Government alone cannot do it, but it has to take the lead role, only then the road to peace including land dispute settlement will get momentum.

Pragmatic Strategy for Implementing the Peace Accord. The people of CHT would be happy if the law and order situation remains stable and they don't have to pay toll to the warring factions. The regional leaders are just exploiting the backwardness and the ignorance of the people for their personal gain. These issues should be considered for devising strategies and plans to isolate the miscreants.

Effective Engagement at Leadership Level. Efforts need to be undertaken beyond formal and official norms to interact and understand the leadership. The government lacked warmth and on the contrary the Tribal leadership remained rigid and egoistic for which issues could not be progressed.

Lack of Unity Amongst the Warring Factions

After signing the Peace Accord, United People's Democratic Front (UPDF) and JSS (Reformist) got defected from the mainstream JSS and strongly opposing its stance on the Peace Accord. The increasing rise of kidnapping, killing, arson, and toll collection incidents in the Hills are occurring primarily for the competing interests of these factions.

The Unresolved Nationality Issue

In 1972, when MN Larma demanded for autonomy of CHT, he was advised to assimilate with the new nationalist Bengali identity which he refused to endorse. Article 1 of the constitution declared Bangladesh to be a unitary state, ruling out any possibility of a separate legislature or autonomy for CHT. Article 3 specified Bengali as the state language, and article 6 declared that the citizen of Bangladesh were to be known as Bengalis. These provisions were seen as direct patronization of Bengali hegemony.

Constitutional and Legal Challenges

Formation of RC goes against the spirit of the unitary form of government which is embodied in Article 1 and 59 of the constitution. It is also contradictory to the Article 27 that treats all citizens equally by the law. In case of HDC Act 1998, Rule-4, 6 and 7 preserving eligibility of the Tribal candidature as chairman/member are also contradictory to the Article 28(1). There are few more such Rules that contradicts with the constitution.

Land Commission and the Impediments

Land Commission Act 2001 limited the scope of activities of the Commission and provided absolute decision making power to the Chairman which made it dysfunctional. It also opined to conduct land survey before undertaking the land resolution tasks which is strongly opposed by the tribal members. The Chairman RC proposed 23 amendments

of the Act and later opined for 13 amendments. ‘Peace Accord Implementation and Monitoring Committee’ recommended for 12 amendments on 22 January 2012 but the Ministry of Lands finally agreed for 06 amendments out of all.

Need for Consensus on the Rules for Resolving Land Dispute

Tribal land ownership based on traditional law and the government provided/leased lands are all legal and authentic therefore these rules may be regarded for settling land issues alongside other rules enacted by the government. In case they are overlapping, right decision may be taken without causing any loss to the petitioner by providing right compensation.

Need for Holding of Cadastral Survey

The Peace Accord specified that a land survey is to be held after the rehabilitation of the Tribal refugees and IDPs. The Bengalis wanted to have the survey before which the Tribal are strongly opposing. The Tribal feel that, if the survey is conducted before, the Bengalis will make up their documentary flaws before going for dispute settlement. And the Bengalis feel, if survey is held before many Tribal people would fail to produce appropriate papers in support of their properties. A realistic approach must be reached on the issue.

Legal Pluralism and Assimilation Effort

In CHT, the formal laws applicable to the whole Bangladesh (The Forest Act 1927), formal laws applicable only to CHT (The CHT Regulation); and the customary laws of the Tribal people - all seem to be functioning. This assertion of authority by multiple bodies leads to a nuanced negotiation of power among the communities holding different claims which needs to be streamlined.

Lack of Synergy in the Functioning of NGOs and IOs

Over time, the classical IO/NGO roles seem to have changed from poverty alleviation to involving in politics, influencing policy making, acting as pressure group, and even carry ulterior motives threatening the national security. There is lack of regulatory mechanisms, little coordination thus causing duplication of efforts. In CHT nearly 100 such organizations are working, although on ground one would hardly find corresponding developments.

Indigenous Issue and Need for Robust Diplomacy

As per ILO 169, besides guaranteeing protection, all other lands necessary for livelihood to be preserved by the state. There is nothing mentioned about government

USF (Khas) land which is under the government control. It also states that any exploration of resources and conduct of operations by SFs to be done with prior approval of the native people. Late Aungshoi Prue Chowdhury, the 15th Bomang Circle Chief clearly said that there are no indigenous people in CHT but the Tribal people continue to refer them as ‘indigenous’ to gain leverage in the settlement of land issue.

Role of Security Forces

There are various pressure groups both domestic and international voicing against the military presence in CHT, but their presence is a must for the continuation of the peace process and development of the region. It is a strategy adopted by the regional leaders to criticize and defame military for grabbing media attention and cheap political aims.

THE WAY AHEAD

General

Bangladesh has all the potentials to be a middle income earning country by 2021. To achieve it in stipulated timeframe, it must strive hard to harness its untapped resources particularly from CHT resolving burning land issues. It needs a multipronged strategy encompassing broad range of areas as discussed below.

Political Measures

CHT issue is essentially a political issue and to resolve it, the government should take measures to unite the stakeholders for the common cause of establishing peace with special emphasis on land issue.

Mainstream political parties should integrate the people of CHT with mainstream politics. Efforts should be also taken to register the Regional political parties or else they be made accountable for their deeds.

Over time the demand for autonomy lost its relevance and therefore the government should fulfil their all legitimate demands.

In order to resolve the constitutional and legal challenges of the Peace Accord, favourable public opinion should be formed to amend certain clauses which are contradictory to the constitution and laws.

The government should take pragmatic decisions to resolve land issue and resolve Voter identity card issue at the soonest.

Measures Needed for Effective Assimilation

In CHT it's an amalgam of state centric and regional administrative and legal apertures. Besides assimilating above mentioned mechanisms, Government will need to take concurrent actions covering socio-cultural and psychological measures.

Legal pluralism to be effective the functions of District Administration, Chittagong Hill Tract Development Boards (CHTDB), HDC, RC and the Circle Chief need to be clearly divided.

The regional leaders must make the right choices for resolving the CHT issue and encourage the populace to abide by the laws of the land and practice their rituals without animosity.

Subjects by handing over of those wouldn't challenge the unitary nature of the state should be immediately transferred.

Measures should be taken for cultural fusion blending vibrant Bengali and diverse Tribal culture. This can be better done by involving mainstream media.

Reforms – Land Commission and Land Dispute Settlement Act 2001

The Land Commission and Land Dispute Settlement Act-2001 needs complete refurbishment as under:

Any kind of sale, lease, and transfer of lands may remain suspended before the Land Commission starts functioning and the mutually agreed amendments to the "Land Dispute Settlement Act 2001" should be immediately implemented.

A universally accepted, reputed, and professional Commission Chairman should be appointed with balanced representatives from all the communities.

For effective land dispute settlement, Government may rethink about the cadastral survey and take steps to secure the land rights of all.

For resolving disputes both traditional and state laws may be considered. In case of overlapping situation decision can be taken without causing any loss to the petitioner.

Diplomatic Measures

The Tribal believe, winning 'indigenous' status would put them in an advantageous position in regards to the settlement of land issue but is not based on anthropological and historical findings. Government needs to act robustly on diplomatic front to subdue these propagandas.

Efforts must be taken to enlighten all on the Tribal history and ILO conventions, only then it will be difficult for the regional leaders to exploit any situation.

IOs and NGOs working in the CHT must be brought under government supervision so that they can be made to contribute positively. Efforts should be taken so that the visitors and IOs are discouraged to conduct closed door meetings in CHT.

All efforts must be taken to stop evangelization and scrutinize those organizations through periodic clearance and appropriate action taken thereof.

To improve the understanding between the SFs and the international, regional, diplomatic communities regarding the government and SF's activities in CHT, frequent engagements are suggested.

Redefining the Role of the Security Forces

In post peaceaccord era, it demands a fundamental change in the psyche of the soldiers so that they don't get carried away by classical soldierly instincts. These forces need wider understanding of the context and exercise restraints than applying force.

In spite of relative peace, the SFs forces should maintain adequate preparedness for effectively dealing with riotous situation; threats against lives and properties of the ordinary citizens, public properties and development efforts.

A well thought out psychological operations should be launched backed by adequate staffs and resources while major plans are executed for example the land issue, cadastral survey, amendments to land dispute settlement act and so on.

Mainstream media should be integrated with these operations for achieving maximum result.

Border Guard Bangladesh (BGB) including slice of Rapid Action Battalion (RAB) may be employed to replace the SFs.

CONCLUSION

The historical anecdotes recorded by the British suggest that many of the CHT tribes originated from Myanmar. With these demographic migrations that took place during the Mughal period, the Bengalis also entered CHT. The British introduced the 1900 Act, which barred people from outside to buy land and reside in CHT. But the introduction of private land ownership including construction of Kaptai Hydroelectric project not only alienated the Tribal people but also acted as a major triggering source for insurgency. The Bengali settlement in CHT further complicated the situation. Because of security reasons, people had opportunities to grab each other's lands. As the historic Peace Accord

was signed it acclaimed lot of appreciations but the land issue placed the prospect of peace into a serious qualm. Credible progress isn't possible without bringing the anti-Peace Accord groups into confidence or completely neutralizing them. Considering the constitutional principles and the unitary nature of the state, conceding autonomy would be detrimental to the sovereignty of Bangladesh. As such the solution needs to be found out within the constitutional framework. We need an effective strategy to assimilate the Tribal people with mainstream Bengalis meeting all their rightful demands.

Clearly defined functional responsibility can reap benefits from the existing arrangement of judicial pluralism. Devolution of power to the people's representative can ensure the demand of the accord without altering the unitary character of the state. Settlement of voter identity card issue is of paramount importance for transferring power by holding credible elections. Cadastral survey would certainly complement the dispute settlement process. The Land Commission should be chaired by an accepted accountable personality. Conforming to the state law, necessary amendments to the relevant act must be implemented. Donor agencies can enormously assist in development, building confidence amongst the Hill people and their institutions. With all these, we can hope to see a better, peaceful and stable CHT in the coming days.

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