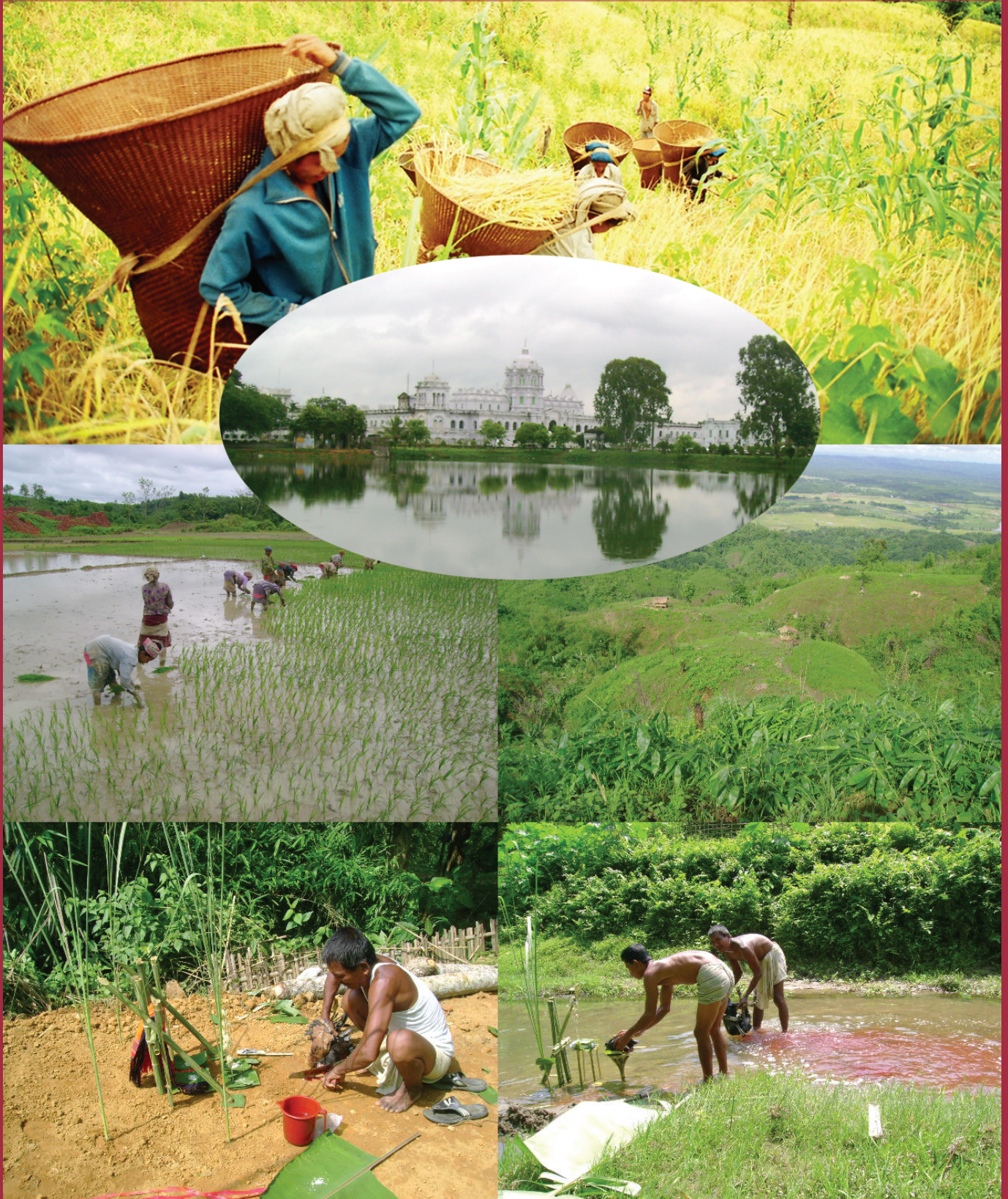


Blaming Jhum, Denying Jhumia

Challenges of Indigenous Peoples Land Rights in the Chittagong Hill Tracts (CHT) of Bangladesh;
A case study on Chakma and Tripura



Sontosh Bikash Tripura

Thesis Submitted to the Faculty of Social Sciences
for the Master of Philosophy Degree in Indigenous Studies
University of Tromsø, Norway, June 2008

BLAMING JHUM, DENYING JHUMIA

**CHALLENGES OF THE JHUMIA INDIGENOUS PEOPLES LAND RIGHTS IN THE
CHITTAGONG HILL TRACTS (CHT) OF BANGLADESH: A CASE STUDY ON
CHAKMA AND TRIPURA**

**SUPERVISED BY: DR. TONE BLEIE
DEPARTMENET OF PLANING AND LOCAL COMMUNITY RESEARCH
UNIVERSITY OF TROMSØ
NORWAY.**

**SUBMITTED BY:
SONTOSH BIKASH TRIPURA
MASTERS OF PHILOSOPHY DEGREE IN INDIGENOUS STUDIES
UNIVERSITY OF TROMSØ
NORWAY.**

DEDICATION

TO

MY FATHER

WHOM I LOST IN MY CHILDHOOD

AND

MY MOTHER

WHO I FIGHT ALONE FOR US

ACKNOWLEDGEMENTS

To produce this thesis there has been contributions in combination from various institutions, organizations, and individuals. In relation to financial support I am grateful to NORAD (Norwegian Centre for International Cooperation in Higher Education) for funding my study in Norway. Special thanks to the Centre for Sami Studies for the additional financial support for my fieldwork.

To give a traditional way of giving thanks, I must first acknowledge my supervisor Dr. Tone Bleie, who gave me scholarly guidance with feedback and showed patience from the early stages of writing a project proposal to producing the scientific work for the whole series. And also thanks to her for understanding my own challenging situation and the grounded realities of my life. In our life journeys, I discovered her in Dhaka, Bangladesh—during her book release programme in 2005. In another mysterious turn in life, I found her again at the University of Tromsø, Norway.

I shall also give thanks to all the academic staff, administrative staff, and my entire academic and social network of friends and the university overall for providing linkage with my study and living in Norway.

I am also realizing those who supported and gave me guidance during my fieldwork in Bangladesh and India. Not only that, but in every stage of life there are those who are well-wishers—I am also grateful to them for helping me to reach this stage.

I cannot forget my mother who made life sacrifices for us, all alone for two decades long without expecting anything in return. Her one piece of advice that motivates me from my childhood is that ‘our land, our life, they will take away at anytime, but education will support you in order to overcome this situation.’ Thanks Mum, for your advice and sacrifice.

How can I forget my wife Chaitali who has fought through her pregnancy life without my support and presence and looking after alone our son Rangchak, while I was away in Tromsø? I must always remember that my son has grown up without his father’s love and affection while I was in Tromsø. I must take care of him, in the way that I missed from my own father.

Sontosh Bikash Tripura

ABSTRACT

The special focus in this thesis is about the challenges of the indigenous peoples land rights in the Chittagong Hill Tracts (CHT) in Bangladesh. Traditionally, indigenous peoples practiced jhum cultivation. The notion of the ownership of the land for the practices of jhum cultivation is distinct from wet-rice cultivation. The jhum cultivator must every year change the places to plant from one field to another.

On the other hand, jhum cultivation has been blamed for environmental problems since the British period, while justifying taking the land in relation to profit or a commercial perspective. Jhumia Indigenous Peoples in the CHT have been ruled over from the British to the successive Bangladesh period. The approach of the entire ruler has centrally focused on the land and natural resources in the CHT. Furthermore, the policy on the Jhumia indigenous people's economy and livelihoods has been imposed by outsiders throughout time.

In this context, I especially concentrated on how the Jhumia Indigenous Peoples have been alienated from their land from the British period to the present state of Bangladesh. That is why, I focused on how the indigenous peoples have been displaced and lost control and their rights to their own land. Jhumia Indigenous peoples are still being dislocated from their land due to the state policy, particularly Bengali settlement with the state security support.

The myth of vacant land was established during the British period and the Bangladesh state still has been allying the concept of vacant land. However, behind the myth of vacant land what is the State policy and how it affects on the Jhumia indigenous peoples, which has not been discussed as much. Hence, I have discussed the historical context for the imposition of the "doctrine of terra nullius" during the British period and its implication in the successive nation states of Pakistan and Bangladesh. By the imposition of the "doctrine of terra nullius" the land has been used for the State's own interests and its impacts on the indigenous peoples have been the focused in this thesis.

In this study I will present the general picture of the root causes of the land alienation of the Jhumia indigenous peoples and the conflict therein. Thus, to analyze the present context, I have focused on the changing trends of land ownership patterns and the hidden interests when they blame jhum cultivation since colonial authority to the nation-state of Bangladesh.

The major findings in my thesis are that the local people's existence has been violated by the imposition of power for the extraction of the land and natural resources. Using the author's own subjective experience as a point reference, it brings into focus the present reality of indigenous peoples in the CHT of Bangladesh.

LIST OF ACRONYM

ADB= Asian Development Bank
Aus Aid = Australian Agency for International Development
BEIC= British East India Company
CBTDB= Chittagong Hill Tracts Development Board
CERD= Convention of Elimination of Racial Discrimination
CHT =Chittagong Hill Tracts
CHTDF= Chittagong Hill Tracts Development Facility
DF= Department of Forest
DANIDA= Danish International Development Agency
FAO= Food and Agriculture Organization
GO = Government Organization
HDC= Hill District Council
ICCPR= International Convention of Civil and Political Affairs
IWGIA= International Working Groups on Indigenous Affairs
ILO= International Labour Organization
MoCHAT= Ministry of Chittagong Hill Tracts Affairs
NGO= Non Government Organization
NORAD= Norwegian Agency for International Development
PCJSS = Parbattya Chhattagramme Jana Samhati Samity
RC= Regional Council
RF= Reserved Forest
TNC= Trans National Corporation
UCF = Unclassified State Forest
USAID = United States Agency for International Development
UNPFII= United Nations Permanent Forum on Indigenous Issues
UN = United Nations
UNICEF= United Nations Children Education Fund
UNDRIP=United Nations Draft Declaration of Indigenous Peoples
UNDP= United Nations Development Programme
WB= World Bank
WFP = World Food Programme

THE LIST OF THE CONTENTS

DEDICATION	ii
ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	iv
LIST OF THE ACRONYM.....	vi
LIST OF MAP	vii
Map -1.1: Bangladesh Map	5
Map-1.2.: Chittagong Hill Tracts Map	5
Map-4.1. map of the pre-partition of the India and the existence of the Princely state of Tripura	50
Map-4.2. location of the Bangladesh and Pakistan	53
LIST OF THE TABLE	vii
Table -3.1 Governments created Reserve Forest during the 1880s in the CHT.....	39
Table-3.2. Mauza distribution according to ethnicity in CHT.....	46
Table-4.1. Estimated acres of cultivable land and household according valley area	55
Table- 4.2. Land characteristics in CHT	63
Table -4.3. Population growth rate and ratio between the Jhumia and non-Jhumia	65
Table-4.4. State security force in the CHT.....	66
Table -5.1. Composition of the members in Regional Council	72
Table -5.2. Ethnic representative on the Hill District Council	73
Table -5.3. List of the Land Commission members	77
Table -5.4. Land ownership pattern on the basis of household.....	83
Table -5.5. Jhum dependent ethnic groups based on family size and percentage	85
Table- 5.6. Changing pattern of the population size on the basis of religion.....	90
Table- 5.7. Landless rate in Bangladesh since 1947 to 2001.....	93
Table -5.8. Large scale land occupation by the selected agencies	94
LIST OF THE FIGURES	vii
Figure -5.1. Post- accord administrative structure in the CHT.....	71
Figure -5.2. Land management structure in CHT under the new law of the post-accord regime	75
Figure -5.3. Present land administration in the CHT.....	76

CHAPTER ONE: INTRODUCTION	1-20
Motivation for my study	1
1.1. Problem formulation	2
1.2. Location of the study area	4
1.3. History of the settlement in CHT.....	6
1.4. Ethnographic background of the Jhumia people	7
1.4.1. Background of the Chakma	7
1.4.2. Background of the Tripura	9
1.5. This Study’s major assumptions and the research questions	11
1.6. Objective and significance of this study.....	12
1.7. Research methodology	13
1.7.1. My personal background and its implication for the approach taken	13
1.7.2. Research strategy and the site selection	15
1.7.3. Extended experience travelling by Tripura state.....	17
1.7.4. Management of the field challenges	18
1.7.5. Limitation of this study	18
1.7.6. Thesis approach.....	19
1.8. Layout of the chapters	19
CHAPTER TWO: THEORETICAL FRAMEWORK AND LITERATURE REVIEW	21-29
2.1. Theoretical ground of the analysis of the role of political state system and the Jhumia people	21
2.2. State versus Multilateral Organization and Human Rights Paradigm	22
2.3. Representation to the “others” in the history of Bangladesh.....	23
2.4. Searching the historical background of the CHT	24
2.5. Background of jhum cultivation.....	25
2.6. Land control and administration among the Jhumia.....	27
2.7. Introduction of state system and the introduction of privatization of land ownership.....	27

CHAPTER THREE: HISTORICAL BACKGROUND OF THE FIRST COLONIAL CONTACT IN THE CHITTAGONG HILL TRACTS: 1760-1947
.....30-47

3.1. Historical background of the East India Company and the British in CHT (1760-1860).....30

3.2. Company rule and imposed the Jhum tax on the hill people 1760-1860.....32

3.3. Revolt of the hill people against the imposition of Jhum tax 1760-1860.....33

3.4. The Post-revolt hill situation in relation with tax34

3.5. Analysis of the contemporary situation at the British Bengal and expansion of the CHT.....34

3.6. Imposition of the “terra nullius” doctrines in CHT.....36

3.7. Contested British Administration in CHT.....36

3.8. British administration and the introduction of the reserved forest in the CHT.....38

3.9. Jhum cultivation in the CHT in relation to revenue interest of the British40

3.10. Introduction of plough cultivation43

3.11. The CHT Regulation of 1900 Act and its impact on land and forest44

3.12. Chapter Summary.....46

CHAPTER FOUR: DISLOCATION AND THE RESISTANCE IN THE CHITTAGONG HILL TRACTS: 1947-199748-69

Pakistan period-1947-1971

4.1. Partition of British India and the CHT in 1947.....49

4.2. The role of the State of Pakistan on hill people in the CHT from 1947-1971.....52

4.2.1. Islam, the constitution of the state of Pakistan and the nullified status of CHT...53

4.2.2. Kaptai dam and the roots causes of the displacement of the Jhumia54

4.2.3. Approach on massive Kaptai Dam affected jhumia people56

4.2.4. Impact of the ‘Development’ intervention on Jhumia57

4.3. History of the Revolt of Jhumia during the Pakistan period, 1947-197158

B. the turbulent Bangladeshi period: 1971-1997

4.4. The factors of the liberation movement in the East Pakistan	59
4.4.1. Liberation war and the role of Jhumia	60
4.4.2. Constitutional demands and state responses	61
4.4.3. Imposition of the new dimension of the doctrine of “terra nullius” in the hills and the Bengali settlement	62
4.4.4. Central land characteristics of the CHT	62
4.5. Dislocation and Revolt of the Jhumia against the state	65
4.6. Military deployment	66
4.7. Chapter summary	68

CHAPTER FIVE: CHT-ACCORD, EMPOWERMENT AND LAND MANAGEMENT, 1998-200770-98

5.1. The Post-Accord administrative structure including land management	70
5.1.1. Ethnic distribution in a new administrative structure	71
5.1.2. Present structure of the land management in the CHT	74
5.1.3. Provisions for the formation of Land Commission	76
5.1.4. Role of the Donors and INGOs for the promotion of the Land Commission activities	78
5.2. Analysis of the land ownership pattern and types of land use.....	80
5.2.1. Land Ownership pattern in the study village	81
5.3. Present context of the jhum cultivation and land rights	84
5.3.1. The Jhumia rehabilitation programme and the analysis of the trend of land ownership	86
5.3.2. Land privatization and its impact on jhum cultivation	88
5.3.3. The influences of religion and ethno-nationalism on land issues	89
5.4. Has the state sponsored Bengali settlement and land grabbing stopped?	92
5.5. Ownership of land in the CHT and nationally.....	93
5.6. Challenges to current land ownership system and jhum cultivation	95
5.7. Chapter summary	98

CHAPTER SIX: CONCLUSION99-104

REFERENCES105-111

LIST OF THE APPENDIX

1. Chittagong Hill Tracts Accord , 1997
2. CHT Regualtion of the 1900 Act
3. ILO Convention of Tribal and Indigenous Peoples, 1989 on Land Righths
4. UN Declaration on the Rights of Indigenous Peoples

CHAPTER ONE: INTRODUCTION

Motivations for my study

I was born in the Chittagong Hill Tracts (CHT) during the Bengali settlement period in the 1980s. My childhood memory is still very much alive– I remember how the Bengali settlers attacked our villages and occupied our lands. We fled deep into the humid jungle beyond our village. Day after day we lingered there without food and shelter, just struggling to save our lives. Many babies' were crying because they were starving; so were those of us who were a bit older. I still remember my parents' facial expressions when they said they could not give us food; they did not have any to give. Many babies do not know why they were crying. While staying alive in the jungle was itself a challenge, our elders were even more worried about those Bengali settlers and the state security forces and if they would find us where we were hiding. In this precarious situation of an anticipated ambush and the need to rapidly escape deeper into the jungle, no one wished to accompany parents who had a baby. Those parents had to fend for themselves under desperate circumstances. Indeed, these humans were faced with the most painful dilemmas between how much self-interest we have and how much we love our own lives rather than others.

Why did the Bengali attack us? Why did the military attack us? There were not any obvious and correct answers. Maybe they do not belong to the same ethnic group or the same religion, as their identity is Bengali Muslims and they control the military. What were the problems in this case? What did they really want? No one could answer these questions. While we were hiding in the jungle, they took all of our property from our houses. Our houses were then burned down. Some of us did not have the chance to even come back to the village and save a few cherished memories, a trunk or a picture.

How long is this nightmarish situation going to continue? I have since grown up, become educated and enrolled in an international Master Programme in Indigenous Studies that deals with indigenous rights. The answer is not known to on any of us. Only the state has

the answer. When will the state start caring for her hill children? The experiment and situation is still facing the people of CHT. Given my own personal history, it is of compelling importance for me to try to understand the root causes of the violations against indigenous peoples in relation to land I chose to select the above mentioned topic as the focus of this thesis.

1.1. Problem formulation

The ethnically diverse people of the Chittagong Hill Tracts (CHT) have been practicing jhum cultivation commonly known as shifting or swidden cultivation over last several centuries. Jhum has evolved into a cherished way of life, in which culture and ecology are intertwined. This mode of life can be said to contain “economic” and organizational aspects such as land management systems. Through its known history, Jhum has been based on a communal management land system. In brief, inhabitants of a settlement have tended to pool labour in order to be able to do the demanding and skilled work needed to turn a forested slope into a fertile field for a rich variety of tubers, vegetables and grains. When the British colonialists arrived in the tropical area they believed that jhum cultivation was odd and inefficient, and started to use powerful means in order to discourage people from practicing it. This attitude and the faulty assumptions which underpinned it, still exists in the state policies of the current Bangladeshi nation state. Jhum cultivation has been condemned and criticized for being economically unproductive and environmentally destructive. One has not seriously examined the cultural and environmental factors which are crucial in such productions, and have been even less sensitive to the knowledge, living conditions and rights of the women, men, and children who are jhumia, or shifting cultivators.

Hence, jhumia people in CHT, and elsewhere in the wider Himalayan region have become mistreated and forced to leave their cherished land and agricultural practices. The land alienation of the current jhumia in CHT seems to build on a historical legacy of misunderstanding and denying jhum cultivation legitimacy. Thus, in this study I want to examine the historical context for the post-colonial state policies, where jhumia

cultivators are blamed for environmental destruction, their contributions to the wider economy made invisible, and their rights to live off jhum cultivation is progressively denied them. As I have said, jhum cultivation has been and still is blamed for causing deforestation and environmental degradation. I will not focus much here on whether or not this is currently to some degree accurate. But, as noted, I am interested in getting some insight into the historical background, which has formed all these highly negative perceptions of this production system and way of life.

The present research focuses on the historical and more recent context which may shed light on the interests pursued by the colonial and post-colonial state; interests made visible in biased and stereotypical notions of the nature of jhum cultivation, leading to attempts to prohibit it entirely. Hence, I will discuss in some depth the historical background of the CHT, starting with the early incipient state formation after the annexation by the British crown administration in the 1860s. In the last 150 years, the lives of the diverse peoples of the CHT have been drastically influenced by the state in three successive periods; the British, the Pakistani and the Bangladeshi. As so often is the case in colonial history, it is the conquerors who speak in records and books. What were the experiences of the native peoples of CHT? Can their own experiences, to some modest degree at least to some degree be gleaned from the written texts of the administrators and early scholars who were mostly Westerners? I will make a modest attempt to see if their voices can be heard to some degree in my thesis. In the contemporary situation, I have as an inhabitant and native scholar, had the opportunity to do my study based on direct discussions and observations. In this context, I have selected Chakma and Tripura villages for my field investigations. The reasons for confining my own investigations to villages from these two ethnic communities will be given below.

This research is primarily focused on past and present causes of the ethnic conflict between the native ethnic groups of CHT, who more recently have joined an ethno-nationalistic movement under the term Jhumia and the Bengalis of the plains. While inter-ethnic relations among the native CHT groups is not a central theme for my thesis, I would like to underline that such differences exist and are also important to study

systematically. To some degree, my historical analysis of the encounters between the native Chakma and Tripura and the colonial state, might expose whether the encounter had differential impacts on Chakma and Tripura society. This analysis might to some degree give pointers on whether these historical legacies might explain social and political differences between current day Chakma and Tripura.

The principal focus will, however, be on the connections between the Jhumia peoples' current claim (also ethnic groups located elsewhere in Bangladesh are behind this claim) to be recognized as Indigenous Peoples and the historical transformations in land rights in the colonial period. So far, the demands of the national "umbrella" organizations of ethnic groups for constitutional recognition as Indigenous Peoples, in accord with intentional conventions, have been refused by the Bangladeshi state. This is an ongoing political struggle, which will take a lot of time and much sacrifice, especially from the weakest party. This much wanted recognition of the Adivasis of Bangladesh (Indigenous Peoples of Bangladesh) in general, and the jhumia people in particular, can create the space for implementation of state obligations as set out in international law, leading to social justice and the rule of law in Bangladesh.

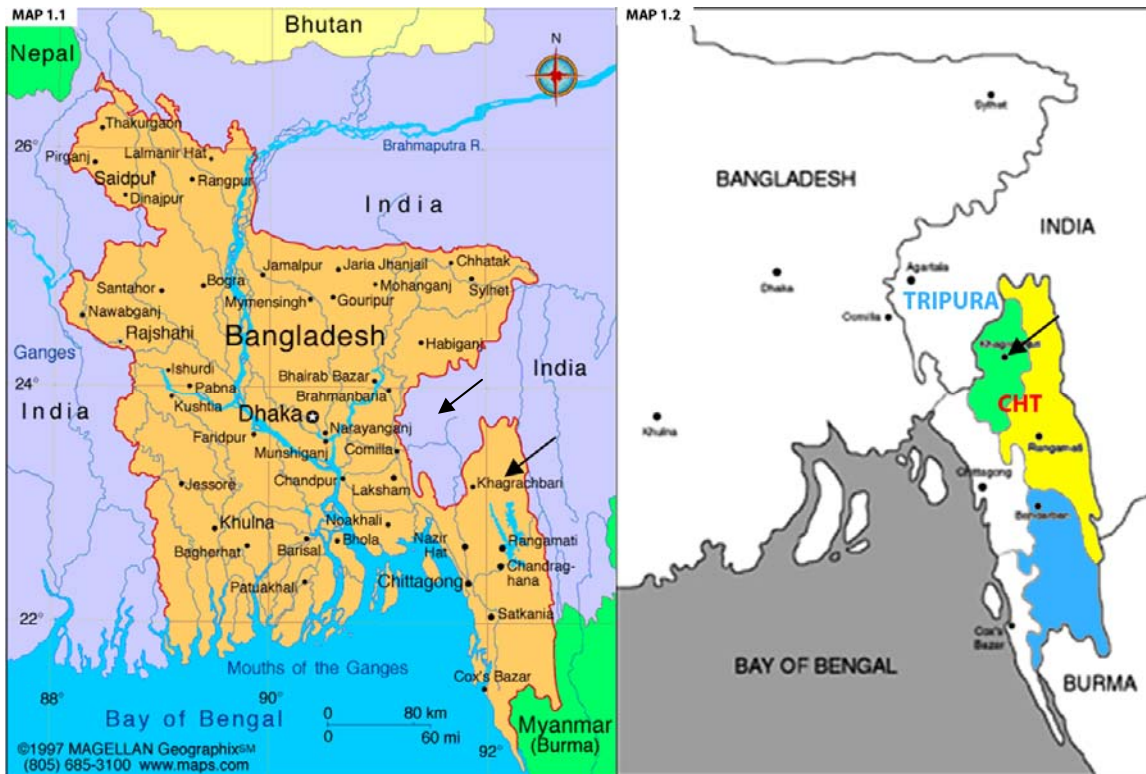
1.2. Location of the study area

The lush hill region of southeastern Bangladesh is today known as the Chittagong Hill Tracts (CHT). It forms part of a vast mountain range which stretches northwards some 1800 km from western Myanmar (Burma), where it meets the mighty eastern Himalayas in China. A narrow strip (roughly 280 by 60 km) is currently part of Bangladesh, administered from the capital Dhaka.¹ The total region amounts to 5093 sq. miles, which constitutes almost 10% of the total area of Bangladesh.² The hill region slopes down to the Bay of Bengal, with the major commercial city of Chittagong and Cox's Bazaar, known for its long sandy beaches. The hill region is also part of a much larger continuous hill region, which stretches westward into the Indian states of Tripura, and

¹ Van Schendel, Willem, The invention of the "Jummas": State Formation and Ethnicity in Southeastern Bangladesh, *Modern Asian Studies*, 26,1, 1992:96

² Gain, Philip(ed.), *The Chittagong Hill Tracts, Life and nature at risk*,2000:1

northeastwards into Mizoram. The Arakan region of Myanmar (Burma) is to the south and southeast, forming a bridge between Bangladesh and Myanmar (Burma). For more than 120 years this vast hill region was administered as a single administrative unit under the British Crown. As will be discussed in Chapter 3, the end of the British rule brought about new national borders which crisscrossed this region. A part became incorporated into the state of Pakistan, and later in 1971 into Bangladesh. In 1983 the region was divided into three administrative districts: Khagrachari, Rangamati and Bandarban hill districts.



Map-1.1: Bangladesh Map Source: <http://www.infoplease.com/atlas/country/bangladesh.html>

Map 1.2. On Chittagong Hill Tracts Source: <http://www.iwgia.org/sw28364.asp>

The geographical features of CHT are a number of ridges, 1500 to 2000 feet high, which stand seven to ten miles apart in the northern part of the District. The Karnafuli River has over the centuries cut across the mountains, formed gorges, and made tributaries, which end up as streams. The soils vary, from soft and poorly compacted sandstone to mudstone, formed by the buried materials of the green, mostly jungle covered hills. The main ridges are flanked by many low cuestas, corrugated by stream erosion and by

intricately dissected horizontal bench lands of older alluvium. Recent alleviation constitutes a very small fraction of the District's many valleys top soil.³

Before the arrival of the British, this undulating, very beautiful region was known as Karpas Mohol or the Cotton state.⁴ As I will discuss in this thesis, the people in that time paid taxes to the imperial Mughals, who ruled from their plain capital Delhi.⁵ The arrival of the British East India Company, as I will show, meant the imposition of new taxes, as well as other highly consequential changes in the property system. Later, in 1860, the British Crown took over as direct rulers, and the areas got their present name, Chittagong Hill Tracts⁶

1.3. History of the settlement in CHT

Those who identify themselves as Jhumia people, consist of twelve distinct ethnic groups. As noted, what is now a borderland region (between Bangladesh, India, Myanmar) was a continuous vast region without any geographical boundaries until the 1860s. As a border region encompassing three countries, all ethnic groups have multiple cross-border connections with closely affiliated ethnic groups, clan-groups, and language groups in one or more of the neighboring countries. These social and cultural relations and the institutions which form them have been affected by the creation of the political state of CHT under the British Crown Rule.

The historical connections between cultural groups, be they language groups, clan or encompassing ethnic groups are bewilderingly complex and not well-recorded in textual evidence. Oral tradition, to some degree, may give some clues, however this is not investigated here. At least we can observe that the current days' Tripura in Bangladesh also live in Chittagong, Comilla, Feni, Noakhali, and the Greater Sylhet region and in

³ Sopher, David E., Population dislocation in the Chittagong hills, the geographical review, vol. LIII, no.3, July 1963:339

⁴ Cotton were produced in the shifting cultivation and used as a Barter system mainly in 17 and 18th century.

⁵ Mughal were the Muslim ruling period in the India subcontinent before establishment of British India since 1526-1857 http://en.wikipedia.org/wiki/Mughal_Empire

⁶ Van Schendel, williem, 1992:96

some others plain districts. A great number of Tripura live in the State which they have the given name.⁷The Marma of the CHT have historical bonds to the earlier Arakan State in Burma. The Mru, the Khumi and the Bawm of the CHT are also living eastwards of the CHT in the Chin Hills of Burma and the Mizo (Lushai) Hills of India. For reasons which are a major issue in this thesis Bengalis have, mass migrated into the CHT in the post-British colonial period (both during Pakistan and after Bangladesh became an independent country). According to the latest (2001) census, the total population of the CHT was 1,342,740. Of them 736,682 were native ethnic residents (Jhumia) and the remaining 606,058 were Bengalis.⁸

1.4.Ethnic background of the Jhumia people

I have chosen to mainly focus on the two largest ethnic groups in CHT in this study: the Chakma and the Tripura. Due to the massive Kaptai Dam and Bengali settlement, both the Chakma and the Tripura people were immensely affected; in the land rights movement, the Chakma and Tripura were the leading ethnic groups in the CHT. Hence, in this context, I have selected them as my focus for that reason. I shall give a brief historical background for these two selected ethnic groups.

1.4.1. Background of the Chakma

When European traveler Francis Buchanan came to southeast Bengal in his 18th century journeys he described the Chakma in this way:

‘I found that the men, except a few words, understood no other languages [than Bengali]. They say that they are the same with the Sak of Roang or Arakan: that originally came from that country; and that one account of their having lost their native languages, and not having properly acquired the Bengalis, they are commonly called in ridicule Doobadse. They call themselves Saks, which word corrupted has, I suppose, given rise to their Bengalese name Sagma or Chakma. From the few words of the native languages, which they retain, it is evidently a dialect of the Burma, nearly the same with that of Arakan. Their religion is that of

⁷ Based on languages category total number Tripura kokborok speakers were almost one million including Bangladesh and India. See <http://en.wikipedia.org/wiki/Kokborok>

⁸ Asian Indigenous Peoples Pact, A brief account human rights situation of the Indigenous peoples in Bangladesh, Chiangmai, Thailand, January-august,2007:7

Godama, corrupted by their having adopted many Braminical superstitious and especially bloody sacrifices to the Devtas'⁹

Furthermore, the anthropologist Prashanta Tripura says about the Chakma:

'Too display signs of having been in close cultural contact with, among others, the Bengalis, as is reflected in their language. Their socio-political organization in pre-colonial period seems to have been shaped by interaction with the kingdoms of Tripura and Arakan, and by Mughal influences [...] they professed to Buddhism when the British came to rule them'¹⁰

A similar approach has been taken in the CHT scholar Willem Van Schendel work. He analyzed what he called the dual cultural traits among the people of CHT. One set of traits are South Asian (a Bengali variant) and another set of traits are Southeast Asian (the Burmese/Arakanese variant) according to Van Schendel. He makes the following crucial arguments, which I chose to quote in full:

'...Chakma in whose history both models are seen to vie for dominance. Burmese elements are strong in their religion, in which Burmese Buddhist elements abound. But their language is so strongly influenced by the Chittagonian dialect of Bengali that it has been described as a Bengali dialect rather than a separate language. Chakma political culture also reflected influences from both South and Southeast Asian models. Chakma political leaders adopted Islamic names during the Mughal period (even though this did not imply any religious change) but they used titles ("mang", "Khan") derived from Buddhist and Muslim traditions. Only during the early-colonial period did the Bengali cultural model become dominant among the Chakmas; the chiefly family adopted Bengali title ("raja", "rani", "dewan") and introduced some Hindu rituals in its religious observances.'¹¹

The famous French anthropologist, Claude Levi-Strauss's study of the Chakma kinship system supports to some degree Van Schendel's argument. Levi-Strauss found influences of both Urdu and Bengali terminology. He also examined the Chakmas' marriage system, including their lineage (or goza or gusti) system. This system is patrilineal, which implies that inheritance is transferred from father to first-born son and they practiced patrilocal residence.¹²

⁹ Van Schendel, Willem (ed.), Francis Buchanan in southeast Bengal (1798), his journey to Chittagong , the Chittagong hill tracts , Noakhali and Comilla, University Press Limited, Dhaka, 1992:104

¹⁰ Tripura, Prasanto, 1992:9

¹¹ Schendel, Willem Van, 1992:106-107

¹² Claude, Levi-Strauss, Kinship Systems of three Chittagong Hill Tribes (Pakistan), Southwestern Journal of Anthropology, Vol. 8, No.1, 40-51, Spring, 1952:40-44

Geographer David E. Sopher found certain similarities in the oral history tradition of Chakma and Tripura. He writes:

‘...certain allusions in Chakma and Tripura epics suggest that these two people have a common origin, and it is evident that in such things as the details of house construction women’s dress, Chakma and Tripura are much more alike than Chakma and Marma. Analysis of Chakma culture shows that, like the Tripura, but hardly at all like the Tripura.’¹³

This view about the interaction between the Chakma and Tripura cultures have led to the conclusion where as Prashanta Tripura analyzes how culture has influenced on Chakma during the distinctive period particularly with the Tripura and Arakan kingdoms as well as Mughals.

However, as British police officer R. H. Sneyd Hutchinson had mentioned that the establishment of the Chakma dominant role in the CHT was around 1600 AD under the Raja Bijoygiri.¹⁴ And according to the population census in 1901, the Chakma population was 44,320 and ninety years later Chakma stood at 239,417 in the census of 1991.

1.4.2. Background of the Tripura

Tripura are considered part of the Tibeto-Burmese language group. They may have migrated before 65 AD. The Sui dynasty came to power from the Yangtze kiang and the Hwang Ho Rivers in Western China through Assam. Early Sanskrit texts refer to these peoples as the “Kiratas” and the “Cinas”.¹⁵ The historical background of the CHT has linkages with the history of the Tripura Dynasty. Bangladeshi researcher Rafi and Chowdhury have mentioned in the history of Tripura that King Bira Raj was the founder of the Hill Tripura Raj Dynasty and he brought the Hill Chittagong under his sway. In 953 AD, Tsula Taing Isandra, a King of Arakan, occupied the present CHT along with the town of Chittagong. Again in 1240, the region was re-conquered by the king of Tripura. The Chittagong region, including the CHT, remained under full control of

¹³ Sopher, D. E., The Swidden/Wet-rice transition zone in the Chittagong Hill Tracts, *Annals of the Association of American Geographers*, vol.54,no.1, March,1964:120

¹⁴ Hutchinson, R. H. Sneyd, *Chittagong Hill Tracts, Eastern Bengal and Assam District Gazetteers*, Allahabad,1909:23

¹⁵ History of Tripura people <http://en.wikipedia.org/wiki/Tripuri>

Tripura from 1540 to 1571.¹⁶ On the other hand, British police officer R .H. Sneyd Hutchinson has mentioned that ‘in the year 1512, the Tripura were at the height of their power.’¹⁷ It has also been supported by the Wolfgang Mey where he has argued that the Kingdom of Tripura exerted strong influence in the Chittagong Hill Tracts during the 15th and 16th century.¹⁸

Hutchinson also has further mentioned that the historical ground of the CHT was under the Tripura kingdom. He stated as ‘the royal family retired then to Myani, a tributary of the Kassalong forest reserve at the Rangamati in CHT, where traces of the occupancy still exist in ruined houses and extensive tanks now buried in the heart of the Kassalong forest reserve.’¹⁹ According to the first census conducted during the British period in 1872, there were 23,341 Tripuras in CHT. In the most recent census from 1991, there were 61,129 Tripura in the country. Francis Buchanan has also remarked on the influence of the Tripura in Chittagong. He mentioned the reign of Raja (King) Rajdhar Manikya (1785-1804). Also, he noted that Tripura²⁰ practiced shifting cultivation, both in the Tripura state and in the Chittagong area.²¹ There is archaeological evidence from the Tripura dynasty in Bangladesh. A huge *digi* (pond of 23 acres) dating back to 1458, has been dug up²² in Comilla, which is located in Bangladesh.

A native anthropologist from CHT has also remarked on the historically close interaction between Tripura and Bengalis over at least five centuries, ever since the sanskritized Manikya rulers of the Kingdom of Tripura welcomed a large number of high caste Bengali Hindus into their realm.²³ A similar view has been expressed by the geographer David E. Sopher. He underlines Bengali cultural influences on Tripura during the 13th century, which resulted in the partial Hinduization of the hill chief of Tripura. He traces

¹⁶ Rafi , Mohammad and A. Mushtaque R. Chowdhury, Counting the Hills , Assessing Development in Chittagong Hill Tracts, 2001:215

¹⁷ Hutchinson, R. H. Sneyd, Eastern Bengal and Assam District Gazetteers, Chittagong Hill Tracts, Pioneer Press, Allahabad, 1909:36

¹⁸ Mey, Wolfgang, 1984: 67

¹⁹ Hutchinson, R. H. Sneyd, Eastern Bengal and Assam District Gazetteers, Chittagong Hill Tracts, Pioneer Press, Allahabad, 1909:36

²⁰ Present Comilla and Noakhali district were known as ‘plains Tippera’ until 1960.

²¹ Van Schendel, Willem (ed.), 1992:125

²² Chanda, Diponkor, Prothom Alo a Bengali daily, date 03/08/07 Darmamanikya ruled the Tripura kingdom since 1431 to 1462

²³ Van Schendel, Willem, 1992:8

these influences to an influx of Bengalis as a result of dislocation of Hindu society in eastern Bengal. He asserts that Brahmans were particularly forced to flee to Tripura as a result of the Muslim conquest of the Ganges plain and delta.²⁴ Willem Van Schendel argues much in the same way as he did in the case of the Chakma, that a South Asian cultural model has influenced Tripura culture. He poses the following interesting argument:

‘...their leader styled himself a “*raja*” (king) in the Hindu tradition, and Hindu elements clearly played an important part in Tippera religion. In other matters (e.g. dress style) they also followed Bengali examples. But despite a degree of Hinduization and Bengalization, they remained clearly separate. Not only was their languages quite distinct, but they also stood out for their syncretism religion, their kinship system, and their economic activities.’²⁵

In the above analysis on the Chakma and Tripura’s historical background was not found on the historical linkage about how the Chakma Dynasty under the Raja Bijoygiri in the 1600s had been established in the CHT. However, there was always competition between the Tripura and the Arakan kingdom to establish the dominant role in the CHT.

1.5. This study’s major assumptions and research questions

The main overarching theme of this study is on the historical process of land management in the CHT, including alienation from the land, with a particular focus on the Chakma and Tripura. A major assumption of this study is that indigenous peoples’ life and culture are completely embedded in their land, not as a piece of earth, but as a life-world formed by ecology, culture and native institutions. Alienation from the land on a huge scale has, been a continuing feature in many parts of the world, especially in the modern era of colonization and in the post-colonial world. The indigenous peoples of Bangladesh’s experience of dispossession can not as such be said to exceptional. Notwithstanding, this study focuses on the trajectory of land alienation experienced by the native people of CHT, the former colonial era until the present in Bangladesh. Therefore, I will attempt to investigate which factors have been most crucial in causing land loss and landlessness.

²⁴ Sopher, David E., 1964:121

²⁵ Van Schendel, Willem, 1992:106

This process has had significant and mostly negative effects on their livelihoods. In line with these assumptions, this study asks the following key research questions:

- What is the state land policy, including forest policy, which has seriously affected the indigenous peoples in CHT?
- Have land rights been transformed in the colonial period, and if so, what are the most credible legal and historical evidence for land rights and land use and which are most important for the Jhumia's current struggle for land rights?
- How have ethnicity and possibly other socially formed differences come to influence the Jhumia peoples land rights?

1.6.Objective and significance of this study

Objectives: the general objectives of this research are to understand present and past contexts of land ownership rights and land use of the indigenous peoples of CHT, and more specifically, how state land policy has been influenced by the Chakma and Tripura in the CHT. The specific objectives are:

- To uncover the historical background of land ownership patterns of the Jhumia indigenous peoples and the state policy which has impacted these patterns
- To explore possible justifications for the importance of special recognition of land ownership patterns and management practices for jhum cultivation.

Significance of the study: by examining legal, customary law and the historical background of land management and the influence of state policies, this study may have the following significances:

- It might help in understanding the role of state policies in the CHT, particularly on Jhumia's land ownership and management patterns
- It will contribute in the field of indigenous academic and policy discourses on how to best understanding changes and continuity in the relations between the state and indigenous peoples
- It may help to development activists and policy-makers to understand indigenous peoples' needs, and rights.

- Its analysis of land and population dynamics might contribute to the efforts aimed at reducing the conflict between indigenous peoples and state agencies

1.7. Research methodology

1.7.1. My personal background and its implication for the approach taken

My intellectual curiosity, which has been a motivation for this research on changes in land ownership and management in the CHT, have to a large degree been stimulated both by my upbringing in CHT and my later involvement (between 1996 and 2006) in the student movement, as well as in development organizations working for constitutional rights and land rights for the peoples of CHT. It was quite clear to me that the current context of contested rights could only be better understood through studying key historical changes. Hence, my methodological approach for this research work is to a large degree based on historical and legal perspectives on land management and ownership patterns. I have mostly become interested in understanding better these emerging and more firmly established patterns at meso-level (in CHT at large) and how they are interconnected with historical processes at macro-level (in the British empire at large and in the province of Greater Bengal). In spite of my increasing interest in studying processes and structures at higher levels of scales, I have attempted to keep a certain focus on local realities, at the level of every day life in households and communities.

This focus is also nurtured by my previous academic research on the CHT, doing my bachelor's and master's programmes in Anthropology at Dhaka University. While I had in fact first planned to do quite some in-depth fieldwork by using anthropological methodologies and methods, the turn Bangladeshi politics took during the period of my fieldwork, compelled me to revise some of my original strategies, and to cancel my plans for comprehensive fieldwork by a whole range of methods (including participant observation and informal interviews with a range of villagers in quite a number of communities). I will come back to the political turn to emergency rule in Bangladesh below.

In doing the research in the CHT, my equal command of Tripura, Chakma and Bengali languages, has been helpful in a number of ways. I believe I have an ability to understand and reflect on a number of socio-cultural issues related to both inter-ethnic communication in CHT and to communication between CHT peoples as a minority in relation to the Bengali majority. My current stay in Norway, as a master's student at the University of Tromsø, has also in certain ways formed my intellectual interest and research focus. I have been struck by how far the relations between the Norwegian state and the Sami are formed by Norway's international commitments to international human rights conventions, including those recognizing indigenous rights.

This recognition, has stimulated my interest in the relations between national policies and laws and international law. Preparing for my proposal and my fieldwork in Norway from August 2006 to May 2007, I got regularly updated through my family and friends in Bangladesh and also through the media (such as online newspapers and TV) about breaking news from, Bangladesh and from CHT. Hence, I could to some degree plan (and revise) my methodological approach and use of methods. In view of the announced Emergency from January 2007, and its destabilizing effects on the security situation in CHT, it became clear to me and my supervisor that I might have to rely to a larger degree than I had first planned, on secondary materials (government publications, UN and NGO-reports, and published academic studies) than I had initially planned. Thus, as my fieldwork approached, and Bangladesh faced increasing political turmoil, I did a final revision of my project proposal, giving greater emphasis on the collection of both officials, published secondary material and of unpublished materials.

My personal background of combining academic work, development activism, social activism and being a member of a Tripura jhumia family, made it in certain respects easier for me to manage to collect information in the summer of 2007, when the political situation was very volatile and the rule of law was constantly under attack. While I could travel to CHT and stay in the area for my research purpose, something a foreign researcher could not have done under these circumstances, I also faced certain immediate security risks due to my earlier political and NGO involvement.

1.7.2. Research strategy and the site selection

For conducting this (mostly) qualitative research, I selected one hill district, Khagrachari District for the primary data collection. In this district there are about 48 percent Bengalis (recent settlers), among the native CHT population, about 30 per cent are Chakma, and about 13 per cent are Tripura, while Marma constitutes nine percent.²⁶ I chose to conduct investigation into a few Chakma and Tripura villages, two Chakma villages and three villages inhabited by Tripura. The selection criteria for these villages were mainly three: a) Assessing the massive impact of the Kaptai Hydroelectric Dam; b) the impact of Bengali settlements; and c) the impact of a Jhum rehabilitation project on one community. The selected category of the communities has represented more or less seventy percent of the community situation in the Khagrachari District at large. I would argue, based on my quite intimate knowledge of the direct as a native person and a former development worker, that the big majority of the communities in this district have been affected by one of these above criteria.

Application of methods

This research work uses a combination of quantitative and qualitative methods. Mainly I use quantitative data, which have been collected and presented in secondary materials such as National Censuses and in surveys on land in CHT. In order to get some indications of land ownership patterns in the selected communities, I conducted a small survey for the collection of quantitative and qualitative data on land ownership patterns (at the household level) and on occupational status of household members.²⁷

Qualitative methods

I have used a range of mainly qualitative methods including individual (semi-structured) interviews, informal (unstructured conversations) and small-group discussions. In connection with conducting the surveys in the communities I also engaged in informal conversations with the community members, and also conducted small-group

²⁶ According to the Bangladesh Bureau of Statistics population in Khagrachari in the CHT in 2006(projected) were 693349 including Jhumia 356482 and Bengali 336867. Among the Jhumia Chakma 2,04,301 , Marma 62,674 and Tripura 88,820.

²⁷ The household survey was designed to register to land ownership/landlessness, ownership of legal land documents and types of land owned (hilly land, valley land and combination of hilly and valley land.

discussions. Given my brief visits to these villages (some I made day visits to, while I stayed for some days in the others) I have had limited opportunities to use participant observation²⁸. The overall highly politically charged, unsafe atmosphere which prevailed in the visited villages, and in the rest of CHT, made people more cautious in interactions with visitors to their villages. Since the villagers to some degree knew me from my time as development worker, my reception in these communities was quite cordial, the circumstances taken into consideration.

When applying the interview method, informants were selected on the basis the following criteria: knowledge about the issues of concern to this thesis; their position as local formal and/or traditional leaders; development activists; political activists; lawyers, and government officials. I have attempted to maintain a gender balance in the selection of informants. I consider interviews with these categories of individuals to be a useful method in eliciting reliable information about a range of specific issues related to land law and land use.²⁹ The specific issues raised in these interviews ranged from: implications of the jhum rehabilitation programme, present rules and regulation of the land ownership pattern, the legal context and the challenges of the land rights movement, community management of the land etc. These interviews took mostly place in their homes, in order not to create suspicion by local authorities.

Besides the collection of the information at the field level, I also collected a range of information at the national level. I participated in a range of national arenas of relevance to minority rights and indigenous rights. Those included participation in a national seminar and other events, celebrating the International Indigenous Days in capital Dhaka. By participating in these programmes, I was not an observer in the classical anthropological meaning of the term (see below); I got considerable evidence of the ongoing political and developmental efforts for and by indigenous peoples both in CHT and in the plain land areas. Issues such as indigenous peoples' land and survival problems and ongoing policies to overcome them, were quite openly discussed between indigenous peoples' representatives, national political workers, civil society members, university teachers, journalists, ex- military personnel, lawyers, NGO activists, and

²⁸ Alan , Bryman ,social research methods;2004: 292

²⁹ Denzin and Lincoln (ed.), Handbook of qualitative research; 1994:646

researchers etc. I participated in these national events during the summer of 2007, as an engaged participant, rather than detached observer. Participant observation is a most important technique for data collection in contemporary field research. It refers to a procedure in which the researcher tries to get some sort of membership or close relationship to the group he or she is studying.³⁰ My presence in these events mobilized a whole set of statuses, the new status as researcher, but also my long established status as development activist and political activist. I tried to handle these potentially conflicting statuses by presenting my self as a researcher, and by purposely minimizing my involvement in the debates.

My challenging somewhat delicate position in these national seminars differed from my roles during these fieldwork in CHT. During the survey work in the villages, I could combine my role as a researcher who had a particular mission and who defined to quite some the degree the situations in which the interviews and group-discussion were conducted with my role as a native who know their daily chooses and situation quite well.³¹

1.7.3. Extended experiences travelling by Tripura state

I traveled also into the state of Tripura, in order to collect some supplementary information on Tripura history. I had already been visiting the state once. Eight years ago, I travelled to Tripura to participate in the inter-state cultural exchange programme between Bangladeshi and Indian Kok Borok speakers (of the Tripura people). My visit to Tripura during mid-July 2007 helped me to get a deeper knowledge of the history of the Tripura kingdom and the historical relations between the areas currently divided between to countries (India and Bangladesh). This more recent history includes the merger of the kingdom of Tripura with India in 1949, resulting in the nationalization of all royal properties. The materials and insights I gained from this trip, has not been directly presented in this work, but they have certainly enriched my knowledge of Tripura history.

³⁰ Nachmias,D and Nachmias,C, Research methods in social sciences ;1987: 289

³¹ Alan, Bryman , social research methods;2004: 292

1.7.4. Management of the field challenges

As a native researcher during the Emergency in 2007, I faced distinct challenges. Because of it, there was not only an added psychological pressure, but a real risk of personal insecurity, as many people were arrested on very loose charges, and remained in jail for months without trials. Bangladesh has declared a state of emergency since 11th January, 2007. During the state of emergency, state security forces and Bangladesh military indirectly controlled central state mechanisms.

In fact, during the spring and summer of 2007, a number of jhumia political activists and civilians were arrested, the situation became increasingly challenging for Jhumia people. The months June to August were also rainy season. Hence, it was challenging to conduct the fieldwork work at the community level. Therefore, due to unfavorable hot and rainy weather, it was difficult to move from one village to another, doing research. I was also got sick of two weeks long for taking the food from the hat or local market. One day when I was travelling with local transport. During the evening we faced a robbery. And weeks later there were two DANIDA (Danish development agency) staff that was kidnapped in CHT. Hence, the overall situation I had to cope with during the research period was a challenge. There was a personal challenge also, which was unavoidable since I was re-unified with my family during the fieldwork. While I was in Tromso, my first son was born. I had to give some time to my newborn son and wife during my hectic fieldwork. However, to manage this demanding situation, I engaged one field assistant during my research period.

1.7.5. Limitations of this study

This research work is pioneered one on the issues of Jhumia land rights. The study was carried out in five Jhumia villages in the Khagrachari Hill District particularly based on the two ethnic groups. However, as I mentioned that CHT are consists of three hill districts and twelve Jhumia Ethnic groups. Therefore, I couldn't manage to cover all the ethnic categories and administrative area due to short period of research work. Hence, the context may vary on the basis of distinct places and the community or local situation.

1.7.6. Thesis approach

This study contains different narratives, perspectives and analytical and conceptual approaches in its six chapters. The close linkages between historical antecedents and current situations as it comes to land rights and land use, necessitate a narrative style going back and forth between past and current events. I will present my theoretical approach in chapter two. The chapters four and five are mostly empirical, using a combination of primary and secondary sources. Chapter three, it is mostly based on secondary sources.

1.8. Layout of the chapters

The study is structured into six chapters. **The first chapter** sets an introduction to the thesis and outlines the themes and problem formulation of the study. Here, the early inception for the motivation for the topic has been briefly discussed in connection with the ethnic violence and in relation to my own subjective experiences. The background of the study area, jhumia people settlement and their background have also been included in this chapter. The methodological parts of the research—methods of data collection, challenges, and strategies used and the methods of data analysis have also been discussed in this chapter.

The second chapter is relatively broad in content and covers the conception and theoretical approach of jhum (shifting) cultivation, jhumia land control and administration and its impact on the introduction of the political state and literature materials on the role of the state policy, historical background and validity of the study, representation of the indigenous peoples in the history of Bangladesh, as well as the historical background of the jhumia indigenous peoples.

The third chapter explores colonial history, particularly how colonialism was established in the Indian subcontinent and its influences on the CHT. Hence, I discuss the British East India Company and Crown policy on the land and forest and the responses of the jhumia indigenous peoples. I especially focus on the colonial economic interests, how it has influenced the jhumia economic life, particularly with the introduction of taxes, and reserved forest. In addition, by the introduction of laws and regulations for the

establishment of the British political and economic interests also will be discussed in this chapter.

Chapter four focuses on the causes of the population dislocation and the resistance of the jhumia indigenous peoples against state and state agencies. The origin of ethnic violence has been discussed in relation to the absence of the recognition of the jhumia people in the constitution, the impact of the development programme and the Bengali settlement and resistance to the responses of the jhumia peoples.

Chapter five focuses on the jhumia indigenous people's empowerment process and land management based on the implementation of the CHT Accord. Here, I also focus on land ownership patterns on the community level, impacts of the privatization of the hilly land, role of religion, as well as how ethnic differences have played out among the jhumia indigenous peoples. Finally, I discussed the major challenges of the jhumia indigenous peoples land rights.

Finally I conclude the chapter by drawing out how the land rights of the indigenous peoples should be according to the international legal instruments for indigenous peoples in relation to land. And finally I conclude by giving my specific recommendation from my subjective and research findings.

CHAPTER TWO: THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The main topic of this thesis about the land rights of the native peoples of CHT. Since the introduction of the British administration including its judicial system and land management system it has been influencing jhum cultivation and practices. I am part interested in applying theoretical approaches which can highlight the underlying ideas of land and property, which informed the colonial state and its post-colonial successor states.

2.1. Theoretical ground of the analysis of the role of political state system and the Jhumia people

The anthropologist Fredrik Barth is the pioneered on the study of in order to understand ethnicity and majority-minority dynamics. His explanation of ethnicity has discussed based on the boundary concept and the process of recruitment, not on the cultural stuff that the boundary encloses. Therefore he particularly focuses on the feature of social organization, rather than a nebulous expression of culture on. Hence ethnic groups are highly situational, not primordial that produces under particular interactional, historical, economic and political circumstances.³² The issues of Jhumma nationalism in the CHT has discussed on the basis of Barth above analysis of the ethnic boundary. Willem Van Schendel also has discussed similar view about the establishment of Jhumma Nationalism that crucially buildup upon the awareness that the hill people share a common historical experiences to be protected against non-Jhumma outsiders though they are internally diversified.³³

Hence, Jhumma nationalism will discuss Barth analysis of Macro level of ethnicity. To him macro level of ethnicity is related with the states or nations, where the main actors are regimes and the groups they confront (organized ethnic movements, liberation movements, and etcetera) as well as various international organizations. Hence, he stated

³² Barth, Fredrik, "Enduring and emerging issues in the study of ethnicity". In Vermeulen, H. and C. Grovers (eds.), *the anthropology of ethnicity: Beyond "ethnic groups and boundaries"*. Amsterdam: het Spinhuis, 1994:12

³³ Van Schendel, willem, *invention of the 'Jummas' in Bangladesh*, 1992:21-23

that ‘we need to see the state as an actor, not merely as a symbolic or an idea.’³⁴ His focus is to analyze the policy of the state during the distinct regimes where the state-policy making core has existed based on power and interest.³⁵ He explains that the role of the regime in the state is such that ‘different regimes require very different conditioning for their perpetuation and have quite different agendas; as actors they therefore will pursue dissimilar policies towards ethnic categories and movements in the populations they seek to control.’³⁶ Therefore, state regulate to categories of persons in the relation to providing vast fields of public goods and their lives and movements.³⁷

Therefore, Van Schendel analysis Jhumma Nationalism will examine with Barth ethnic relation at the Macro level of ethnicity how it has constituted on the distinctive British to Bangladesh period in relation with land rights of the Jhumia people.

2.2. State versus the Multilateral Organization and Human Rights paradigm

The present CHT has included on the state building process during the British colonial period in 1860s. By the extension of the British colonial administration in the CHT and the claiming the land and forest ownership it has impact on Jhumia people. The prospective of the application of the Jhumia indigenous peoples land use and ownership rights as a group’s right in the context of international indigenous legal instruments will be helpful by analyze in this thesis. The concept of group rights has differs with other rights. The major differences have identified with others rights as because group’s rights have indicated for the prohibition of genocide and the rights to self-determination particularly to the indigenous people. On the other hand the provision of collective rights on the Article 27 of ICCPR, anthropologist Tone Bleie has referred as groups rights from the sociological or anthropological point of view where as collective rights has explained as ‘those individual persons who are members of minorities (or sometimes of indigenous groups), exercise collectively, although, as argued above, the right of minorities to practice their religion, their language and other culture can’³⁸

³⁴ Ibid,1994:20

³⁵ Ibid,1994:19

³⁶ Ibid,1994:20

³⁷ Ibid,1994:19

³⁸ Bleie, Tone, Tribal Peoples, Nationalism and the Human Rights Challenges, the Adivasis of Bangladesh, 2005: 64

Hence, given the importance of the recognition of groups rights on indigenous peoples anthropologist Tone Bleie says, ‘within the development stakeholders has to develop indicators to measure expropriation of resources, salient forms of discrimination etc. so as to monitor degrees of inclusion in or exclusion from the development process for minorities and other discriminated groups.’³⁹ Furthermore, land rights movement of the Jhumia indigenous peoples in CHT she has shown the relationship between struggles for cultural rights including the protection of cultural property.⁴⁰

However the recognition of the indigenous peoples as group’s rights has great barriers in the national ground due to the principles and practices of state sovereignty. The inter relationship of the international law between the political process, political campaigns play an important role in human-rights implementation. Hence, it has a prospective the analysis of the Jhumia indigenous peoples land use and ownership rights with the connection with the international indigenous people’s rights on land and natural resources and the rights of culture. Indeed, human rights based NGO operate within that state-centered, human-rights regime; others challenge the ‘club of state’ as social movements with grass roots.

2.3. Representation to the “others” in the history of Bangladesh

Willem Van Schendel et all has discussed the characteristics of the narrative of past in the history of Bangladesh were it represent as Bengali’s glorious past on the basis of nationalist narratives as “the struggle for Bengali Nationhood” and “the Emancipation of the Muslims”. The context of nationalist narratives promised liberation for Muslims in Pakistan and liberation for Bengalis in Bangladesh. These narratives did not allow for citizenship and cultural/religious differences. Thus in the nationalist narratives it was the Jhumia peoples who were excluded due to their failure to “join mainstream” society. Because being neither Muslims nor Bengalis, they were denied full citizenship in both Pakistan and Bengali/ Bangladeshi nationalism. Furthermore they had said that the

³⁹ Bleie, Tone, Tribal Peoples, Nationalism and the Human Rights Challenges, the Adivasis of Bangladesh, 2005:54-56

⁴⁰ Ibid,2005:59

nationalist genre of writing “history in the singular” can be replaced by a style of history-writing which explores multiple narratives of the past.⁴¹

The similar view has analyzed by the anthropologist Tone Bleie as ‘the narrow culturally homogenizing nature of the ideology of the independence movement that preceded the Liberation War. This ideology focused exclusively on establishing Bengali language and culture as the defining attributes of a nation shackled by the West Pakistanis. This movement lead by Awami League, did not articulate any multicultural vision responsive to the cultural rights of East Bengal/ Pakistan’s beleaguered language and ethnic groups in the north-west, the central plains and the south-eastern hills... in which there is virtually no space for the Adivasis of the north-west or for any other ethnic group.’⁴²

Therefore, studying the Jhumia peoples land rights by exploring the in-depth historical context will provide an excellent opportunity to rethink nationalist biases. Hence, analysis of the historical context of land rights in this thesis will help to deconstruct the nationalist history. However, the history of the Jhumia in the CHT has differs the practices of the national history which has written during the colonial and post colonial era. Hence the basis of the looking the historical ground of the Jhumia indigenous peoples land use and ownership rights will be helpful to analysis on the following ground.

2.4. Searching the historical background of the CHT

The basis of the analysis of the historical background of the Jhumia land rights is based on written documents. That is based on the oldest records on the CHT was documented by the British colonial representative Francis Buchanan during his visits in the CHT and others part of Bengal in 1798. Furthermore, during the British period various administrators such as Lewin, Hutchinson and others have given the special emphasis to the British policies in the CHT in relation with land and jhum. Those historical documents are the central grounds analyze the issues in this thesis. Hence, Veena Das quoted the Pandey statement as ‘the history of colonial India has generally been written on the basis of British official records for the simple reason that non-official source are

⁴¹ Van Schendel, Willem at al, 2001:295-298

⁴² Bleie, Tone, 2005:163

neither quite so abundant nor as easily accessible.’⁴³ On the post- British period a significant number of western historians and anthropologist conducted their research work on the CHT. However since the 1960s during the Pakistan government they imposed a restriction to the foreign researchers in the CHT.

In fact, there is some research work which has conducted in the early 1990s by foreign and Bangladeshi researchers. In this case, it was historian Willem Van Schendel, anthropologist Claus-Dieter Brauns and Lorenz G. Loffler and Bangladeshi researcher Amena Mohasin, Meghna Gukhathakurota, Swapon Adnan, etc. there is a some selected authors among the native people such as Prashanta Tripura, Raja Devasis Roy, Lawyer Chandra Roy, Historian Aditya Kumar Dewan etc who have contributed to work on the issues of the CHT. However, the overall historical context of the indigenous peoples in Bangladesh was conducted by the anthropologist Tone Bleie on the background of the indigenous peoples land and human rights. At the same time, I am aware that literary material is open to different forms of perspectives on interpretation. However, to the best of my ability, I will objectively analyze the data herein.

To the clarification of the subjective issues in my thesis I will briefly discuss the some basis issues such as Jhum cultivation, the issues of land use and management of the Jhumia and the implication by the introduction of political state.

2.5. Background of jhum cultivation

The current south east part of Bangladesh known as CHT jhum cultivation centuries has been practices before the introduction of the political state in this territory, just before the 1860s. American geographer Sopher, paid special attention on his geography analysis when he discussed the contemporary understanding of the distribution of swidden and wet-rice agriculture on the basis of cultural geographic features of the CHT. Hence he says as,

‘The Chittagong Hill Tracts occupy a transitional position between two distinctive environments as well as two distinctive economic modes. To the west is the alluvial plain of the Chittagong coast, where permanent wet-rice cultivation is dominant; to the east are the ridges of the Lushai Hills, the Chin Hills, and the

⁴³ Guha, Ranajit (ed.), *Subaltern Studies vi, writings on south Asian history and society*, 1989, oxford university press, 1989:314

Arakan Hills, where swidden cultivation, known locally as jhum, is the predominant agriculture form.⁴⁴

Soper's analysis is based on the geographical basis of the economic mode of production which was the similar view in Van Schendel analysis of cultural model that has influences of South Asian and East Asian culture in the CHT. However, American geographer Spencer had mentioned about the background of the jhum cultivation that 'In the historical development of the world's cropping systems, it is clear that shifting cultivation was one of the very earliest ...and was a part of early Neolithic forest clearing and crop growing in most forested parts of the world'.⁴⁵ Furthermore he stated that it has

'...spread progressively across almost the whole of southern and eastern Asia, Europe, and humid African in the early stages of settlement of these regions by agricultural folk. Certainly, it was widespread in the pre-Columbian Americas, and it was the basic system by which the earliest Europeans occupied much of eastern North America'.⁴⁶

Focusing particularly on in the Asian region jhum cultivation has been practiced in all the humid regions of southern and southeastern Asia, the tidal coasts to the upper limits of crop growth in the middle range of the Himalayas Mountains. However, in South Asia agricultural landscapes have changed a long-continuing over process since native to the pre-European period. Secondly, the arrival of European and the launches of European – controlled agriculture system that has further changing the distribution and location of jhum. Hence, Jhum cultivation has been displaced since the sixteenth century. Therefore, the trend and the context of jhum cultivation have changes in relation with the types of land use. That is why Spencer has said that it has used in many localities where land is now privately controlled, and in many regions from which the aboriginal forest cover has long been cleared.

⁴⁴ Soper, David E., The Swidden/Wet-rice transition zone in the Chittagong Hills, *Annals of the Association of American Geographies*, vol.54,no.1, march, 1964:107

⁴⁵ Spencer, J.E., shifting cultivation in South Eastern Asia, University of California publications in geography, volume 19, university of California press,1996:7

⁴⁶ Ibid, 1966:4

2.6. Land control and administration among the Jhumia

In the context of Asia, American geographer Spencer mentioned two categories of conceptual systems for land control and administration. One of these categories was the land systems where those people who have territorial organization but no formal concept of the organized political state this category of land systems employed by Jhumia. Again he has categorized this into the three separate aspects of land control and administration system in the non political state system. Firstly, the basic conceptual principle that controlled all land within the territorial range belonging to a single culture groups Secondly, the specific operational and administrative procedures that put the conceptual principles into effect. Thirdly are those charging concepts and procedural alternatives that characterized the land system that is beginning to developed principles of land management leading to private ownership. The second category, younger in age, includes land system that employ the agencies and institutions of control and administration which developed out of the formal organization in the political state.

On the land management system in the CHT analyze by the American geographer Sopher conducted a study during the 1960s where his analysis of the concept of personal ownership of shifting land develops when these become an adjunct to permanently cultivated family as well as population pressures on jhum cultivation in the CHT. However, he again says that private rights do not occur on land when in the traditional system of jhum cultivation practice exclusively in CHT. In fact land use and management has been changing rapidly due to interferences of the state notion of land use and management system.

2.7. Introduction of state system and the introduction of privatization of land ownership

In the state, it is normal to consider that the formal political state exercise relatively complete control over the lands that compose it. However, most states distinguish between public and private land. It is equally likely that early political states the two concepts of privately owned lands and lands held by right of usufruct existed side by side perhaps for a long period of time. Most states have a system of taxation by which private lands pay revenue to the state.

The history of the introduction of the land tenure system in India began with the development of private land tenure for certain sectors of the population which was enacted by the Mauryan Empire⁴⁷ of fourth century B.C., although there were presentations of the systems of control by right of usufruct in which villages, culture groups and other groupings continued the older patterns. Later it spread into southeastern Asia in the early centuries of the Christian era.⁴⁸ However, it is a simple fact it remains true today in southern and eastern Asia that no political state exercise full legal control over all the lands of its territory in the sense that the legal concepts and the legal institutions by which the state is organized can be made to apply to every part of its land. No state in southern and eastern Asia today possess a clear and ordered conceptual system of land control which will fit present day administrative problems. Moreover, no state, at present can effectively provide land in the public domain for all the citizens who want land.

However, in the context of jhum cultivation American geographer Spencer stated as

‘It is a practice against the will of government and with sanction of government. It is a utilize, by the secular after quick profits, unmindful of destructive waste, or problems created for the future, just as it is practiced by the careful occupant who thinks of the long term good of the land. It is discussed when conditions and circumstances suggested; it is given up also by the occupants if a region only when subjected to the strong and compulsory pressures of government’.⁴⁹

Spencer’s analysis of the interferences of the state on the jhum cultivation can address the issues of the Jhumia land use and ownership of land and their practices of jhum in the CHT. American geographer Sopher has briefly discussed the influences of land use and ownership system since the British period on jhum cultivation on the basis of three successive period and power distribution in the CHT. Firstly, the exclusive swidden cultivation occurs until 1850s, due to pattern of both the vigor of the culture based shifting and to the prevailing security. Secondly, creation of reserve forest which have tended to discourage jhum cultivation through the British authority at the beginning.

⁴⁷ The Mauryan Empire (322-185 B.C.) ruled by the Mauryan Dynasty, was geographically extensive and powerful political and military empire in ancient India including Bengal. See http://en.wikipedia.org/wiki/Maurya_Empire

⁴⁸ Spencer, J.E., shifting cultivation in South Eastern Asia, University of California publications in geography, volume 19, university of California press,1996:98

⁴⁹ Ibid,1966:2

Therefore, it has created the pressures on jhum cultivation land. Thirdly, the types of relationships between political power and resource use: after the 1870s political power has turned to the British Indian government from the Jhumia.⁵⁰ Hence within this context I will discuss in the next chapter the implications of the Jhumia land rights in the CHTs due to the introduction of the British administration.

⁵⁰ Sopher, David E, 1964:125-126

CHAPTER THREE: HISTORICAL BACKGROUND OF THE FIRST COLONIAL CONTACT IN CHITTAGONG HILL TRACTS, 1760-1947

This chapter will deal with the historical background of the Chittagong Hill Tracts. In discussing the historical background of the CHT, the focus will mainly be on the introduction of the British colonial administration from 1860 to 1947 and its effects on the political institutions of the Jhumia and their land management. I will also discuss the role of the British East India Company, since the Jhumia' experiences with external Western colonial influences originated in the Company period in the 1760s. The major differences between the British East India Company and the British Crown were based on tax and administrative systems. During the company period of 1760-1860, Jhumia was directly paid tax to the Company. The British introduced the doctrine of "terra nullius" in 1868 and administered the Jhumia based on this doctrine. Now I will discuss the Company's colonial role in the hill peoples' lands from 1760 to 1860.

During the Company period, Jhumia were bound to pay tribute to the company through Bengali middlemen. Thus, during the early company period onwards, the historical contact between the Jhumia and the plain Bengalis and through imposed tax collection, there was a triangular relationship established between the Jhumia, the Company and the Company's influential agents (mostly Bengalis). Therefore, during that period the Company and the British Crown and how it influenced directly or indirectly the issues of land and jhum will be the discussion in this chapter.

3.1. Historical background of the East India Company in CHT (1760-1860)

The British East India Company had first arrived in Bengal during the 16th century for trading purposes. The Company's realm of influence was extended to CHT in 1760. By then, a Portuguese trading company had well-established trading links, not only in the coastal region, but also to some degree in the vast hill regions of CHT. When the representatives of the British East India Company arrived, they found themselves in a competition with the Dutch Trading Company. Thus, in the beginning the two European companies competed amongst themselves for concessions from the erstwhile Mughal

ruler⁵¹. The East India Company as well as the Dutch Company had established the factories around 1610 to 1620 in Surat, located on the western coast of India. In 1633 the British East India Company obtained permission to trade in Bengal. One of the first things they did was to build a manufacturing factory in 1640. During that time, Bengal was the main business centre in the Indian sub-continent. Thus, the East India Company was well aware of the immense profit margins they would get through an expansion of their trading empire to Bengal. They were granted permission to trade from the Mughals with a special concession on the level of tax to pay. The British started to export silk, cotton, and spices such as pepper and ginger to Europe. By the end of the sixteenth century, the English had extensive knowledge of many eastern products such as precious stones, expensive spices, ceramics and silks.

The Company also had the permission of the Mughal ruler to administer the three villages of Chutanutte, Govindapur and Kolicatta, located on the eastern bank of the river Ganges, by paying a certain amount of rent annually. In the rural areas of Bengal, the Company dealt with the native population through the so-called Zaminder system⁵². Job Charnock was the Company's Bengal agent during the early years of 1690s, and under his direction the company settled in the village Kolicatta. At that time, Murshidabad, situated north of Calcutta was the old capital of Bengal. During that time the Company also had decided to extend their trading operations into the Chittagong, which was considered very attractive due to the facilities of the sea port the Portuguese had established there. They appear to have thought that by gaining control over the Chittagong port, they would gain control over a strategic point, which would be the base for extending British influence into the hilly hinterland. This hill territory was a vast, mostly unknown jungle-clad world of many different groups, organized on the basis of sub-clan and clan principles in the eastern border area, named by the British as Lushai Hills, which was controlled by Lushai groups⁵³ (this territory is presently known as Mizoram, a north-eastern state in India). The initial contacts between the Jhumia and the trading company were confined to tax collection. Taxes were collected in the form of cotton. Before the arrival of the Company,

⁵¹ During the Nasiruddin Salim Jahangir (1605-1627) see <http://en.wikipedia.org/wiki/Jahangir> 31/03/08

⁵² Zamindari system were employed by the Mughals to collect taxes from peasants , see http://en.wikipedia.org/wiki/Zamindari_system 31/03/08

⁵³ Lushai groups are belonging to the Mizo group lives mainly in the north-eastern state of Mizoram in India.

the jhumia had paid tax to the Mughal's representatives for entrance into the market under the Mughal. Therefore, during the Moghul Period, the CHT was known as Karpas Mohol, or the Cotton State.

3.2. Company rule and the imposition of jhum tax 1760-1860

The prime concern of the British trading company in the late 17th century was to secure stable land revenue. The bureaucratic and military institutions of the Company in Bengal were aimed at implementing selective but deep interventions into Bengal's prosperous and highly diversified economy and society. It also sought to sedentise and make peasants of the diverse indigenous population encompassing nomadic, pastoral and mixed agriculture-foraging adaptations.⁵⁴

Chittagong was, as already noted, important to the Company due to the port that was also a strategic point for expanding control into the hill frontier. In addition, the hill area was important to the company as it served as a "buffer" district, since the Tripura kingdom controlled the surrounding hills in the north-west and the hills and valleys in the north-west part were controlled by the Arakan kingdom and the Lushai hills. The Company policy aimed at the protection of the political, economic and military interests in the hills of Chittagong, and it had an element of segregation.

When the Moghals governors ceded CHT to the Company in 1760, it did not have any administrative structure in place. The initial contacts between the Company and the Jhumia were limited to the exaction of cotton tribute. Therefore, in the early period of the Company indirect rule, the Jhumia enjoyed considerable autonomy. The British Commissioner of Chittagong, Mr. Halhed in 1829 acknowledged that, '...the Hill-tribes of Chittagong were not British subjects, but merely tributaries. Halhed recognized that the British had not right to interfere with their internal arrangements.'⁵⁵ Though, during the Company period, Bengali Company agents had imposed the tax without consent from the Company. Therefore, the British Company and the Bengali agents came to be viewed as exploiters by the natives.

⁵⁴ Bleie, Tone, Tribal people, Nationalism and the Human rights challenges, the Adivasi of Bangladesh , 2005,134

⁵⁵ Amena Mohasin, The politics of Nationalism,1997,28

3.3. Revolt of the Jhumia against the imposition of Jhum tax, 1760-1860

In the beginning, during the Company period, Bengalis were the agents of the company who were commissioned to undertake tax collection in the hills. The amount of the tax was not fixed by the company, thus the Bengali agents took the opportunity to impose very high taxes without informing the Company. On the other hand, the relationship between the jhumia and the Bengalis established a hierarchy wherein the company representatives were superior and the ordinary native Jhumia were inferior. The very number of Bengalis started to increase considerably due to the influx of not only company agents, but also traders as well as fortune-seekers. The increasing presence of the Bengalis in the CHT resulted in increased exploitation through bloated taxes and unequal trade. Because the subsistence tax payments were in cotton, this negatively affected the Jhumia overall internal barter systems. As cotton became the only predominant exchange product in the barter system, the jhumia livelihoods and overall economy were affected.

For that reason, Jhumia ultimately revolted against the company under the leadership of the Chakma chief Sher Doulat Khan in 1776. The resistance continued under the leadership of his son Jan Bakhsh Khan, who finally made peace with the Company in 1787. Eventually, the Jhumia were bound to reach an agreement with the company because of a company-imposed economic blockade. Thus, the Chakma chief accepted British suzerainty and agreed to maintain peace in the areas bordering the Hill Tracts. In return, the British committed themselves to preserve the autonomy of the Jhumia and to restrict the ongoing in-migration of Bengalis from the plains. According to the agreement in 1787 between the Chakma chief and the Company, a 2.5 ton⁵⁶ cotton tax was fixed annually for each male head of household.⁵⁷ As already noted, the native local chiefs were made responsible for the payment of this revenue to the Company.

⁵⁶ I think in this place will use mond which is equivalent 40 kg

⁵⁷ Mohasin, Amena, 1997: 97

3.4. The Post-revolt hill situation in relation with tax

In 1789, two years after of the agreement, the form of tribute was changed from cotton to cash. And the amount is usually fixed at Rs. $\frac{3}{4}$ for each head of household. Jhumia chiefs were liable to collect the increased tribute. Therefore, the amount of the revenue from the hills more than doubled within the following half century. The amount of revenue was 5703.13 at the beginning and it rose to Rs.11803 in 1876. Therefore, by paying Jhum tax in cash, Jhumia were bound to borrow money from the Bengali traders. As a result, Jhumia became economically dependent on the Bengalis since the company period.⁵⁸. In order to be able to pay the taxes to the Company they were often forced to borrow money from the Bengali money lenders with exorbitant interest rates that sometimes went as high as 600 percent⁵⁹. On the other hand, they were bound to sell their products at nominal prices to the Bengali traders who controlled the market.

Hence, the Company earned a formidable tax income, not only through the mentioned cotton taxes, but through land taxes based on an entirely new land tenure regime through the Permanent Settlement Act. The well-known Santal hool (rebellion) was the most consequential mass revolt against British overrule. This revolt occurred in the tribal areas of Bengal between 1855 and 1857.⁶⁰

3.5. Analysis of the contemporary situation at the British Bengal and expansion of the CHT

Before I discuss more closely the main mechanisms of governance used by the administrative system, let me briefly make a few comments on the overall situation in Colonial India and in the tribal heartlands of Greater Bengal. The British presence in the Indian subcontinent from being simple traders to being masters, who enforced—more or less—new property and management regimes, was bound to create unrest and opposition. During the company period, there were a number of mostly tribal mass movements against Company rule. In the Greater Bengal, the Santal mass-rebellion in the early 1850s was a turning point for the British, who to some degree realized that the natives, including the tribal peoples, had to be given some amount of safeguards and self-rule.⁶¹

⁵⁸ Mohasin , Amena 1997:79-80

⁵⁹ Mohsin , Amena,1997,:80

⁶⁰Bleie, Tone ,2005:109-111

⁶¹Bleie, Tone,2005:110-111

Anthropologist Tone Bleie has analyzed the revolt as being a reaction to the Company's policy of large-scale immigration of Bengali Hindu money lenders, merchants, scribes, tax collectors (from other areas of Greater Bengal) to act as intermediaries. Many of them ruthlessly exploited the host Adivasi population and in this process Adivasi people were uprooted and dispossessed. This situation led to a drastic decline in food production, an escalating livelihood crisis and greater vulnerability to famines and epidemics. As a response to this forced dislocation of Santal's and other Adivasi, they collectively responded by launching a range of tribal, non-secular mass movements aimed at reasserting the threatened tribal way of life.

Therefore, based on the bitter experiences with native revolts in Greater Bengal, the British Crown formulated a policy in CHT, based on a separate district and the formation of the CHT Regulation Act of 1900. Prior to this, the British had claimed ownership of land and forests in the hill area of Chittagong. Below, I will discuss the role of the British in land and forest policies in the Chittagong Hills.

Hence, when the British Crown took over ruling, they sought to stabilize the situation and to gain sufficient legitimacy in order to consolidate their power and authority against future potentially threatening mass-rebellions. It was known that there was brutality in the Rebellion of the native forces in 1857-1858 against the company rule. The Company's civil branch of government did not do anything constructive in the face of the beginning onslaught. This was because there was hopelessness in the Company's civil branch due to the discrimination between the army and civil service, due to the folly of the army by the company.⁶²

Thus in the overall situation, when the company could not control the situation, the British Crown took control over India during 1857. The present CHT also was extended under the British crown in 1860 under the Regulation Act No. XXII and designated as a new district of Bengal. The extension of the British Administration in the CHT was to protect the political, economic and military interests of the British. In this context, Prasanta Tripura has argued that there were two objectives for the creation of the separate district, firstly, the domination of the Kuki population, and secondly, to separate Jhum

⁶² Philip, Lawson, *The East India Company*, 1993, 160

and plough cultivation. Within the vast CHT, shifting cultivation was only practiced in the hill regions.⁶³

3.6. Imposition of the “terra nullius” doctrine in CHT

As I discussed before, in 1860 the British made the Chittagong Hill Tract into a district. Later on, the British declared all land on the CHT to be ‘terra nullius’⁶⁴ in 1868. The acquisition of land by the state was resisted by the chiefs who claimed that they were the proprietors of the land on the grounds that they were the hereditary collectors of revenue, and they enjoyed some privileges which pertain to ownership of the land. But the government never recognized such rights of the chiefs. The view of the British government was reflected in this way ‘the chief of the CHT have no title to the ownership of the land which is vested exclusively in the Crown: they exercise only the delegated right of collecting taxes and rents on behalf of government.’⁶⁵ The British had understood that the Hill chief’s influence and control was based on clan and tribal divisions rather than territorial divisions and any exercise of sovereignty. However, the British had to find some ways to appease the traditional chiefs after the “terra nullius” decision had been made.

3.7. Contested British administration in CHT

In the beginning, the British Administration had faced the challenges to manage the native leader in CHT. Jhumia had local political institutions that centered on local chiefs (based on clan and ethnic belonging). There were also political connections with the people of surrounding sub-regions, mainly those living in the Tripura Valley (a kingdom), the Lushai Hill, the Arakan and the Chin Hill. About this situation, historian Willem Van Schendel has written that before the annexation of the British Administration the political power in the hills had been dispersed among many chiefs and these chiefs ruled groups of people rather than territories.⁶⁶

The first British Administrator, Captain T.H.Lewin (1866-1869, 1871-1874) had formulated the view of the attitude of the chiefs in the following way:

⁶³ Tripura, Prasanto, Parbattya Chhattagramer Jhumchase(Bengali edition),2003:20

⁶⁴ Gilbert, Jeremie, Indigenous peoples’ land rights under international law, from victim to actors,2006:26

⁶⁵ Mohasin, Amana,1997:87

⁶⁶ Van Schendel, Willem et al., 2001: 23

‘These chiefs has hitherto exercise paramount authority throughout the hills, keeping all power, profit and information in their own hand, and, with a view to maintaining their position, they had hitherto opposed all efforts of the government representative to introduce any change whatever into the administration. It was plain that, unless I was content to be the merest shadow of authority, I must convince them that my power was greater than theirs.’⁶⁷

However, the British declared the “terra nullius” doctrine; the British then encountered the native tribal chiefs, particularly Chakma Queen Rani Kalindi Rani. Therefore, Lewin pointed out: ‘I was now on good and cordial terms with all the chiefs of my district, except always the ever-truculent and irreconcilable Rani.’⁶⁸ Thus, in order to undermine her powers, Lewin adopted a strategy of divide and rule and appeasement at the same time and offered land to the Ishan Chandra Dewan and Nilchandra Dewan in order to create a division among the Chakma elites, hoping this would diminish their loyalty to their Queen⁶⁹; although those British proposals were not accepted by Ishan Chandra and Nil Chandra Dewan.

Due to the contested situation with the native tribal leader, the British integrated the native leadership into the colonial administrative structure in order to dampen the chief’s frustration. Therefore, the British introduced territorial chiefs and divided the CHT into three circles in 1881. The three offices were granted for three circle chief, who worked directly under the Deputy Commissioner. Each was assigned his territory for tax collection. However, during the nomination of circle chiefs, the British played the strategic role particularly to establish their authority over the CHT territory.

Besides the purposes of revenue collection, there were hidden political motives behind the creation of circle chief in the northern part of the CHT. The demographic and ethnic composition made it natural to appoint a Tripura chief. The Tripura amounted to 18,559 out of 31,897. The rest of the population was 6980 and 6358 from the Chakma and Marma respectively.⁷⁰ However, the British selected a circle chief from the Marma.

The reason for them not appointing the Tripura was because of a stereotype by the British administrator. The view of the Tripura peoples as expressed ambivalently by Captain

⁶⁷ Mohasin , Amena, 1997: 29

⁶⁸ Ibid,1997: 30

⁶⁹ Ibid,1997:30

⁷⁰ ibid;1997:30

T.H.Lewin ; ‘ They are the only Hill people...among whom I have been met with meanness and lying... the only people whose savagery is unredeemed by simplicity and manly independence’⁷¹.

On the other hand, the contrasting view was mentioned by Bangladeshi scholar Amena Mohasin (1997:30) quoted from Hussain (1990:122) as;

‘The Tripura, the best organized of the entire hill people, had resisted the British. At one time they even refused to pay tax to the British. In order to punish the Chakma and the Tripura’s for their resistance, the British on the suggestions of Lewin carved out a new administrative subdivision in the northern part of CHT.’⁷²

The British saw the need to sow the seeds of internal division and to punish the Chakma and the Tripura for their resistances. Those were the reasons for not appointing the circle chief from the Tripura people.

However, the overall authority in the CHT, as anthropologist Wolfgang Mays has stated was that; ‘The Deputy Commissioner became more powerful than Circle Chief. The function of the Deputy Commissioner was to preside over all Civil, criminal and jurisdiction matters, whereas Circle Chief retained power over customary matters’⁷³. Thus it was helpful to the British Authority to enjoy their economic and political interests up to the late 1940s, when Partition of India became a reality. As such, these chiefs had sovereignty over the people who still respected their native chiefs, but not over their land. Due to co-option of the circle chiefs and the headman under the British ruler, jhumia civilian were also alienated.

3.8. British revenue interests and the introduction of the reserved forest in the CHT

The rich forest lands of the CHT were attractive to the British India government in many ways. During the 1860s, in the beginning of the British India government, they introduced the commercial plantations for products such as tea, coffee, oranges, as well as teak. The abundance of forest resources have also been collected since the Company period. During the 1850s, the Company initiated a large construction effort for a railway network which could connect their far-flung roadless colony. Therefore, large hardwood

⁷¹ Ibid, 1997:30

⁷² Ibid,1997:30

⁷³ Mey, Wolfgang, 1984: 95

timber was required in order to make the enormous number of railway sleepers needed for expanding the railways. That time, the Company created two new railway companies (they owned the railways as state enterprises; private companies were encouraged to be operators).⁷⁴

In order to ensure a sufficient supply of materials, a state monopoly over the forest resources was established, though the official rhetoric stressed that this was done in order to conserve the forest resources. In the mid-1860s as much as 50,000 cubic feet of timber was annually extracted from the hill area. According to a government estimate, an average annual surplus of Rs. 70,000 was generated from the timber and teak plantation from the CHT. About the forest resources, Captain T.H. Lewin commented in the following manner

‘Throughout the whole (CHT) district are found large tracts of valuable forests trees. A large tract in railway sleepers has lately sprung up from the port of Chittagong; the Port Conservator estimates that upwards of 30,000 sleepers have been exported during the last two years’.⁷⁵

Therefore, the British found a further outcome for the forest in CHT. Thus, it had motivated the British government to create the Reserved Forest for sources of revenue during the 1880s. Thus the government created this from 1356 square miles out of 5146 square miles in the CHT. The area of the declared reserve forest covers more than 25% of the total area. The list of government created reserved forest area in the CHT is given below.

Table: 3.1. Government created Reserve Forest during the 1880s in the CHT

<i>No.</i>	<i>Area of the reserve forest</i>	<i>Date of formation</i>	<i>Area in square mile</i>
1.	Kassalong reserve forest	1 st December 1880	736
2.	Rainkhyong reserve forest	1 st March 1881	213
3.	Sangu reserve forest	6 th May 1881	145
4.	Sitapahar reserve forest	15 th March 1882	11
5.	Matamuri reserve forest	1 st April 1883	251
	<i>Total</i>		1356

Source: R. H. Sneyd Hutchinson, 1909:72

⁷⁴ Railway in the British India En.wikipedia.org/wiki/Indian_Railways

⁷⁵ Mohasin, Amana, 1997:90

On the declared reserved forest, there were also imposed restrictions put in place in an attempt to protect the region's vast forest resources in the name of protection of forest. Thus, this claim was questionable on a number of accounts. Anthropologist Tone Bleie stated about the creation of the reserve forest that the Adivasi peoples had been forest dwellers over centuries. 'Sustainable management of the diverse and abundant forest resources had over generations become integral to their economic, social and cultural institutions. There was at that time, no substantive evidence of serious degradation as a result of indigenous practices.'⁷⁶

However, it has been found that the highest outcome from the reserve forest between 1900-1901 was that the amount of the collected of revenue from reserve forest was Rs. 82,226 out of a total Rs. 122867 of the government total revenue collection. The second and third highest revenue earned from the Land Revenue and Capitation tax or jhum tax was Rs.14102 and Rs. 8388 respectively.⁷⁷ Therefore, the government gave the priority to the creation of reserved forest and plough cultivation as sources of land revenue instead of jhum cultivation. On the above mentioned sources of revenue, is the main implication of the declaration of the "terra nullius" doctrine. Thus, the real but hidden purpose of the Reserved Forest Act was rather to protect the commercial interests of the colonial state.

3.9. Jhum cultivation in the CHT in relation to revenue interest of the British

The original and only form of agriculture in the CHT was Jhum, i.e. shifting cultivation. Jhum was much more than a way of producing food; it was a way of life for the jhumia. This was so because jhum was embedded in a communal ownership system, based on different kinds of exchange and sharing that pervaded social and religious life. Thus, Jhum encompassed deeply held social and cultural values, rather than distinctly "economic" values.

The skilled practice of jhum has been described in the following way;

‘...jhum is planted with mixed seeds of rice, cotton, melon, cucumber, pumpkin, millet, beans, bananas, gourds, yams, sesame and maize. The jhum thereby

⁷⁶ Bleie, Tone, 2005:109-111

⁷⁷ Chittagong Hill Tracts District Gazetteer, Statistics, 1901-1902, the Bengal secretariat book depot, Calcutta, 1905:7

provides a steady and stable supply of food for the former throughout the year for the different plants/crops have different yield seasons. This method of cultivation entails great labour and is usually done by mutually assisting working groups. Jhum can only be cultivated for two successive years and the land then is left to fallow for about ten to fifteen years. This system has been practiced by the jhumia for centuries and had been in harmony with the ecology.⁷⁸

American geographer David E. Sopher has explained the importance of the jhum cultivation as

‘the Swidden economy of the Hill Tracts not producing surplus food on a taxable scale, perhaps, the commodity which served to symbolized political dependence of the valley jhumias on the short-stapled jhum cotton grown for domestic use by all the hill peoples.’⁷⁹

Furthermore he stated that,

‘Jhum and wet-rice cultivation are the principle economic activities of the aboriginal population, commonly called “hill men.” Jhum is the traditional one, and apparently was the one used exclusively by the hill men until the 1860s’.⁸⁰

The view of the first British Deputy Commissioner, Captain T.H. Lewin (the first Deputy Commissioner of CHT) also wrote how struck he was by his observation that the different hill tribes in all parts of the CHT followed the same agri-economy. Captain Lewin described the mode of economy in the CHT in this way:

‘Throughout the whole of the Chittagong Hill Tracts I couldn’t find a single person practising plough cultivation. Practically it will be rare case for a person who lives without shifting cultivation. For instances it could be found in some acres of cultivable land besides the chief villages where it was cultivated by the Bengali labour. But recently it has been assumed that the introduction of the Reserve Forest Act for the prohibition of shifting cultivation (for) Hill Peoples will influence on plough cultivation.’⁸¹

However, due to the consequences of the imposed policy in the name of reserve forest, the total area of Jhum cultivation had been reduced to one third of the formerly available area for Jhum. Hence, the fallowing cycle was drastically reduced from fifteen to twenty

⁷⁸ Mohasin, Amana, 1997:82

⁷⁹ Ibid, 1964:123

⁸⁰ Sopher, David E, population dislocation in the Chittagong Hills, the geographical review, vol. LIII, No.3, July, 1963:339

⁸¹ Lewin, Captain T.H. Wild races of south-eastern India 1870, translated by Chakma, Gyanendu Bikash, 1998:20-24

years to eight to ten year's.⁸² The shortening of the fallowing cycle also had drastic implications for labour input, cropping patterns, regeneration and competition for land. On the contrary, the state had not undertaken any measures to compensate the many tens of thousands of Jhum farmers or shifting cultivators, who found themselves in an increasingly difficult condition.

Not only that, during the Colonial regime (as indeed post-colonial powers) the shifting cultivation had been unanimously condemned as a primitive method of production, detrimental to the soil, and wasteful. They called it a 'primitive' mode of agriculture without appreciating the ecological function of these long fallow periods. On the other hand plough cultivation was considered a "civilized" and more progressive type of agriculture. Thus, the British attempted to replace jhum cultivation with plough cultivation in several ways, as plough cultivation was in their eyes economically more profitable and technologically superior. However, the main reason for the British promotion of plough cultivation was that it yielded greater surpluses which increased the revenues.⁸³

Hence, Dutch anthropologist Wolfgang Mey stated that the main reason for the argument was based on economic considerations regarding the exploitation of forest wealth. It has been overshadowed by the discussion of shifting cultivation, and they were interested in abolishing jhum cultivation. However, they bypassed the possibilities of agriculture in the tropical rainforest.⁸⁴

The clear position of the British Administrator was expressed by the first Deputy Commissioner Captain T. H. Lewin on jhum as

'I strongly dissuade Government from any such proceeding. The Jhum tax should not be regarded as possible sources of revenue to us but, on the contrary, should be regarded as illegitimate and injurious sources of revenue which by every revenue roll. Our object should be put a stop to Jhum culture and induce the people to settle and cultivate by the plough, making land revenue the basis of our district settlement.'⁸⁵

⁸² Mohasin, Amena, 1997:92

⁸³ Mohasin, Amena, 1997:83

⁸⁴ Mey, Wolfgang, 1984:74.

⁸⁵ Hutchinson, R.H. Sneyd, Chittagong Hill Tracts, Eastern Bengal and Assam District Gazetteers, Allahabad, 1909:66

The approach to jhum cultivation later on created the provision to control it under the CHT Regulation of the 1900 Act.

3.10. Introduction of plough cultivation

Jhum was continuing in the Chittagong area until the official prohibition was imposed. The boundary between the regulation district and the Hill Tracts was a contemporary demarcation of the eastward limit of wet-rice cultivation. American geographer David E Sopher mentioned that, 'the withdrawal of swidden cultivator's isolation must have followed as a result of their isolation within the confines of the belts of low hills in the central district, surrounded by an overpowering alien culture'.⁸⁶ Hence, Chakma and Tripura people were bound to move in the CHT. Later on, British colonialists had discouraged jhum cultivation in the CHT.

Indeed, the government sanctioned a special budget since 1869 for the promotion of plough cultivation in the CHT. Instead of the government initiated to the promotion of plough cultivation, the Jhumia rejected it. Indeed, in the 1870s there were only 120 acres of land that had been brought under plough cultivation in the last three years by 38 families. As well as the fund Rs.1104 was utilized out of Rs. 38,000 government sanction funds on plough cultivation. One of the factors of not implementing a policy on plough cultivation was the opposing role of the Chief on the interests of jhum tax.⁸⁷ Because of the chief received the 50 percent tax or Rs. 2 from each jhumia family. Rest 50 percent headman and the British government received 25 percent each. On the other hand, from the plough cultivation the local authority, chief and headman did not get any share.⁸⁸ Not only that, the introduction of plough agriculture had decreased the states' dependency on the local functionaries (i.e. the chiefs), since the farmers were allowed to pay directly to the government under the new system. On the other hand jhumia solely earned Rs. 933,695 by exporting 133,385 mounds of cotton during 1906-07. And 1907-08 it had risen to 250,000 mounds. The total production of cotton had covered 20 percent from the

⁸⁶ Sopher, David E, 1964:120

⁸⁷ Ibid,1909:69

⁸⁸ Van Schendel, Willem, et al, 2001:59

Jhum. From the rest, rice covered 75 percent. And the prices of rice were Rs. 3 to 5 during that time.⁸⁹

However, to establish plough cultivation, the British allowed cultivation of the lowland without imposing taxes under rule 34(1) on the CHT regulation of the 1900 Act. This rule created a special provision for allotment of land to plough cultivators. In the Act, it was said that ‘no settlement of Government Khas land shall be made in the district of Chittagong Hill Tracts’⁹⁰. However, those provisions were exceptionally attractive for plough cultivators. Now, a single hill family or non-hill family, were allowed without *salami* (fees) between 5 to 10 acres of land under the supervision of the Deputy Commissioner.

British police officer Sneyd Hutchinson, analyzed the context as

‘Large proportion of the population will always Jhum, it is doubtful if lands suitable for the cultivation of rice are available on which to settle the population. There is certainly a very great amount of land that can be reclaimed, but this is not necessarily being suitable for rice cultivation.’⁹¹

Furthermore, he shows there were 11,000 people practises plough cultivation during the 1901 and they are mostly from the plains instead of patronization. On the other hand the total jhum dependant population was 109,360 out of total 124760 during same period.

3.11. The CHT Regulation of 1900 Act and its impact on land and forest

Chittagong Hill Tracts Frontier Police Regulation III of 1881 was passed as the first law in the CHT. However, the CHT Regulation of 1900 Act was the first major law in the CHT that the British introduced for the purposes of the demarcation of the boundaries of the Chittagong Hill Tracts and the Reserved Forest.⁹² The provision of Article 41 empowers the Deputy Commissioner to control and regulate and declare any area to close to jhum cultivation or restrict the expansion of jhum cultivation to new areas, without giving any reason. More than a century later, it is still in force when it comes to land and

⁸⁹ Hutchinson, R.H. Sneyd,1909:67

⁹⁰ See the Chittagong Hill Tracts Regulation, 1900 (1 of 1900) P. 89
http://www.mochta.gov.bd/resources/THE_CHITTAGONG_HILL_TRACTS_REGULATION,1900.pdf

⁹¹ Hutchinson, R.H. Sneyd,1909:66

⁹² See the Chittagong Hill Tracts Regulation of the 1900 (1 of 1900) p. 130
http://www.mochta.gov.bd/resources/THE_CHITTAGONG_HILL_TRACTS_REGULATION,1900.pdf

a range of other administrative measures. Hence, the implication of the CHT Regulation I will be discussed now in relation to Jhumia land and resources rights in general and to Chaka and Tripura people in particular.

When analyzing the CHT regulation, it is striking that it does not acknowledge the ethnic and cultural diversity in the CHT. Jhumia did not a century ago, as today, form one homogenous society. At the time of the formulation of the 1900 Act, the indigenous notions of land and resource property was based on ethnic and clan diversity. There were several ethnic groups living in the region.⁹³ Each ethnic group followed, to some degree, their own system of management when it came to land and forests. Such diversity was blatantly overlooked when the CHT regulation was made, as the British were only preoccupied with their own perceptions of private land and forest ownership. Thus, the introduction of the CHT Regulation as the basis for the land management system changed the whole context of land management in significant ways.

Dutch anthropologist, Wolfgang Mey has argued that:

‘When the British took over the area; they were, as in other parts of India, confronted with land rights structurally different to their own. To the shifting cultivators, land was common property, the village’s community, and kinship groups and sometimes the spirits were considered the ultimate owner of the land; individual families had the right to usufruct only.’⁹⁴

In analyzing the regulation, the Bangladeshi scholar Amena Mohasin has said that ‘The CHT manual in actuality was a legal document that ensured the erosion of the Jhumia sovereignty, and paved the way for their alienation from the political system into which they were later incorporated.’⁹⁵ Furthermore, she stated that Manual undermined the power of the native chiefs of the many other smaller groups and the Tripura, the biggest of them all. The local hierarchy had virtually been turned into a group of ‘tax collectors’ for the colonial state.⁹⁶ However, the British were given priority on the revenue interested and they appointed their own representative.

Now I will discuss its impact on Jhumia in general and the Chakma and Tripura peoples in particular where Chakma and Marma ethnic groups were created as territorial chiefs in the three circles. Under each circle, there are also several sub- circles created, which is

⁹³ See the R. H. Sneyd Hutchinson census on 1872-1901

⁹⁴ Mey, Wolfgang, 1984:76

⁹⁵ Mohasin, 1997:33

⁹⁶ Ibid, 1997:34

called mauza. There were 369 mauza and mauza chiefs, called headman were recruited from the different ethnic groups. At present, the number of ethnic representatives in the mauza on the three circles is shown below.

Table-3.2. Mauza distribution according to ethnicity in CHT

<i>Ethnicity</i>	<i>Circle</i>			<i>Total</i>
	Mong circle	Chakma circle	Bomang circle	
<i>Bawm</i>			5	5
<i>Chak</i>			7	7
<i>Chakma</i>	13	146		159
<i>Khumi</i>			2	2
<i>Khayang</i>			1	1
<i>Marma</i>	41	9	66	116
<i>Mru</i>			17	17
<i>Pankhua</i>		10		10
<i>Tanchangya</i>		2	3	5
<i>Tripura</i>	28	5	7	40
<i>Bengali</i> ⁹⁷	1	5	1	7
<i>Total</i>	83	177	109	369

Source: Tripura Aranendu (ed.) on administrative powers and responsibilities of Headman and their capacity, 2001:31-42

During the British period it was found that among the Jhumia, the Chakma and Marma ethnic groups were relatively more advantaged groups than others. The circle chief and headman were holding the overall power among the Jhumia. Therefore, most of the valley land in the CHT was controlled by the Chakma and Marma. Hence, the submerged Rangamati valley was held by the Chakma which was submerged due to the massive hydroelectric dam. The amount of that land was 54,000 acres or 40 percent of the total cultivable land in the CHT, which I was mentioned earlier. Under the Mong circle, most of the flat land was controlled by the Marma headman compared to Tripura. Not only that, due to the appointment of the Mong circle chief, it had influenced the Tripura people. Many Tripura was converted into Marma due to influences of authoritative power by the Circle Chief during the British period.

3.12. Chapter Summary

On the above discussion during the British Company and Crown period economic policy has found that revenue was the prime target to implement their policy. Therefore, during

⁹⁷ Due to the displaced by the jhumia people Bengali settlers occupied the headman post during the 1980s.

the British Crown, plough cultivation was promoted to increase their land and forest revenue instead of jhum. To establish their supreme authority, CHT Regulation of 1900 Act was passed. Hence, land and forest administration was controlled by the British. Therefore, Jhumia were alienated on their land during British crown period. However, among the Indigenous peoples those who had a share of the power as agents for tax collection and land management were comparatively more advantaged than the others. In the above analysis, I have shown the list of headmen appointed from the distinctive ethnic groups and the rules and regulations of the land and forest management rights under the circle chief and headmen. It was found that Chakma and Marma ethnic representatives were absolutely captured in the process.

Hence, it was also found that land and forest policy during the British period has ultimately influenced the Jhumia. The creation of the representative, such as circle chief and mauza chiefs were the more advantaged groups than other Jhumia. Therefore, it has created social differences in the Jhumia society. In the above context, in the post-colonial successive Pakistan and Bangladesh period, the way that land rights have been recognized for the Jhumia people will be discussed in the next chapter.

CHAPTER FOUR: DISLOCATION AND THE REVOLT IN THE CHITTAGONG HILL TRACTS, 1947-1997

A. Pakistan Period- 1947-1971

In chapter three, I discussed the historical context for the early phases of the loss of political autonomy and land alienation during the early and late British Period. This chapter's focus will be on the most important causes of population dislocation and one of its unintended consequences, the political mobilization of the Jhumia against unacceptable state policies in relation to their native land rights. The two major causes of the population dislocation were the construction of the huge Kaptai Dam during the 1960s and the Bengali transfers programme in the 1980s. These two major state-initiated mega-efforts were projected by the erstwhile governments as icons of a developmental state. Both these initiatives, which altered the relationships between the state and the ethnically diverse Jhumia, set in motion "snowball" effects in a range of economic, social, environmental and political areas. I will, in particular, focus on the political responses of what the hill people saw as detrimental post-British land and forest policies. In this chapter, I will focus on the question: What is the state policy on Jhumia people's land and forest in the post-colonial regime and what are the implications?

In order to further contextualize my forthcoming discussion and analysis, let me recapitulate some major arguments from the previous chapter. I discussed the decision to claim the vast hill region of CHT as 'terra nullius,' to create an entirely new forest management system, in which the legal categories "reserved forest", and "unclassified state forest," were of prime importance. As may be recalled, I have argued that the jhumia during the late British Period practiced their traditional system of jhum cultivation on the 'Unclassified State Forest', which in the year 1868 covered 76 percent of the total area of the CHT.

In spite of these efforts to drastically change indigenous economic practices and ways of life, the Jhumia were not being dislocated during the Company Period and the Period of Crown Rule. Nevertheless, the scope of mobility for jhum cultivators was to some degree curbed by the introduction of a new local administrative system, with the Mauza as the smallest unit of revenue collection. I will discuss below how the Jhumia have managed

their lands which were classified as Unclassified State Forest in the successive periods of the Pakistani and Bangladeshi states. I will also trace why many Jhumia involuntarily had to leave their native lands and villages and to flee to the nearby states of India, in particular to the Mizoram (currently in the State of Arunachal), due to the mega-dam project. The liberation war and the emergence of an independent Bangladesh built on democratic principles did not bring a new era of tolerance and recognition as the hill leaders had hoped for. Their constitutional demands were rejected, and a decade later, a huge population transfer programme was launched by the state. As a result, more than 50,000 jhumia people have migrated to the Indian Tripura state again.

Therefore, due to the failure of getting the demands accepted by a democratic and legal political movement, the Jhumia turned to a new political strategy, based on violent resistance through insurgency tactics. This movement got broad support in the areas of the CHT who had been most seriously affected by the oppressive state policies. There was a continuous state of war between the state and the political party Parbattya Chattagram Jana Samhati Samity and their military wing Shanti Bahini until the CHT Accord was signed in 1997. Thus, I will also discuss in detail the major trends in land rights violations during the whole period from 1947 to 1997.

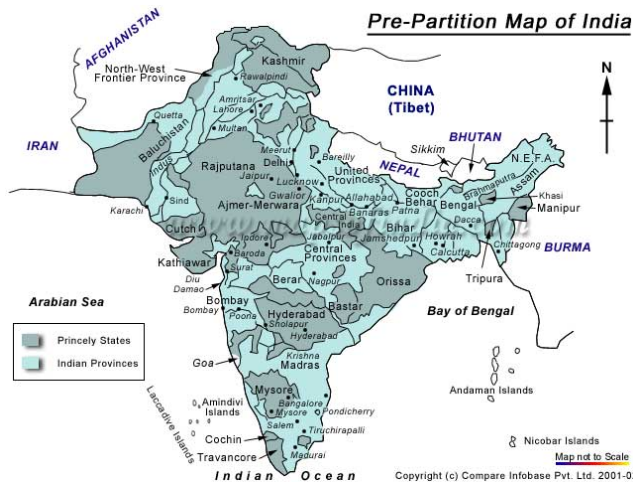
4.1. Partition of British India and the CHT in 1947

The “sun” of British India ended in 1947. In the final and decisive years before the fateful Partition of the continent, sectarian religion became the driving force, based on the so-called “two nation theory.” Thus, succumbing to the claim that Muslims and Hindus were best served as having separate states, the last British administration in India divided their “jewel” crown colony into India and Pakistan. Only two world religions (Hinduism and Islam) were considered in the dramatic violence-prone years before the Partition.⁹⁸ Little attention was given to the fact that British India was a land of many ethnic groups, a vast number of spoken languages, and of other religions such as Sikhism, Jainism, Christianity, Buddhism, syncretised traditions and Shamanistic religions.

At the time prior to, under, and after Partition of British India, only two parties played any leading role; the Indian National Congress (a party with both secular and Hindu

⁹⁸ Das, Manmath Nath, *Partition and Independence of India*, 1982:38

leaders) and the Muslim League (a Muslim led party). Finally, Pakistan was created and composed of two separate geographical parts, East and West Pakistan. The distance between the two Pakistan parts was 1000 miles, with the new Indian state in-between them.



Map -4.1: the map of the pre-Partition of India and the existence of the Princely state of Tripura

Source: <http://www.mapsofindia.com/maps/india/prepartitionmap.htm>

What is presently Bangladesh (including the CHT), was known as East Pakistan during the early post-partition period (1947-1971). In East Pakistan, about 76.00 percent of the people were Muslims, according to the Census in 1951. In the same year, the percentage of Muslims in the CHT was only about 6.00 percent. The remaining population in the CHT were mostly Buddhists (about 75.00 percent), but there were a sizeable number of Hindus (about 14.00 percent), Christians (above 1 percent) and so-called others—including ethnic people practicing Shamanism (3.30).⁹⁹ Returning to the situation in CHT during the Partition Period in 1947, 94 percent of the hill people were not Muslims.¹⁰⁰

Therefore, when Bengali Muslims were politically mobilized to support the inclusion of East Bengal into Pakistan, the jhumia was not in any way part of the movement or feeling close to the Muslim League, 95 percent of its population were non-Muslim.¹⁰¹

⁹⁹ Adnan, Swapon, Migration, Land alienation and the causes of poverty in the Chittagong Hill Tracts, 2004:60

¹⁰⁰ Mohasin, Amen, 1997:35

¹⁰¹ Ibid, 1997:35

.Moreover, the main proposal from the erstwhile leaders of the Jhumia was to stay as a 'native state', rather than being included in either India or Pakistan.

The Bengal Boundary Commission headed by Cyril Radcliff, appointed to recommend the new boundaries, invited representation and memorandums from different parties on the sensitive boundary issues. According to the invitation The Muslim League submitted its memorandum on 17th July 1947 and they claimed to include the CHT into Pakistan. They showed the reason that East Bengal had no source of power except the CHT area for the development of hydroelectricity.¹⁰² The Indian National Congress did not show any strong interest in incorporating CHT into India. They were on the other hand, insisting that West Bengal, with its Hindu majority population and also a good number of ethnic groups, should be incorporated into India.¹⁰³ Later on, the Bengal Boundary Commission headed by Cyril Radcliff "awarded" the CHT to Pakistan. Two major considerations led them to recommend the incorporation of the CHT into Pakistan. Firstly, they treated the CHT as part of the hinterland of the port city of Chittagong and secondly, they saw the need to compensate the Muslim League for the decision to include most of Punjab into India.

According to the 'principle of balance,' they had decided to 'compensate' for their proposed changes to the Kashmir boundary between India and West Pakistan. Since Pakistan was to lose its western wing (i.e. Kashmir), the CHT was to be given to them on the eastern wing of Pakistan. Thus, it makes sense to argue that Radcliff awarded the CHT to the new Muslim majority state of (East) Pakistan.

Amena Mohasin (1997) refers to Mountbatten's comments from the Hudson (1969) quotation as;

'The whole economic life of the people of the HT depends upon East Bengal. On the other hand Chittagong port of the East Bengal also depends upon the HT. whereas there are only one or two different tracts through the jungle into Assam, and it would be disastrous for the people themselves to be cut off from East Bengal.'¹⁰⁴

During the hectic weeks when the Bengal Boundary Commission was discussing alternative solutions, also the hill leadership made their demands, which were

¹⁰² Ibid, 1997:36

¹⁰³ Ibid ,1997:36

¹⁰⁴ Ibid ,199736

unfortunately not in unison. Firstly, three Circle Chiefs demanded that the British, the Congress Party and the Muslim League should recognize each of their circles as 'native states'. Secondly, other leaders among the Chakma elite also approached the Congress leaders and pleaded for the merger of the CHT with the Indian Union, due to the secular posture of the Congress. Other leaders were in favour of being included into Burma. That the CHT was finally included into Pakistan was, therefore, also partly because hill leadership could not come across with a final common decision about the future status of the Hill Tracts. They demanded different administrative structures such as a pure monarchy, constitutional monarchy, and a republican form of government. Thus, Mohasin is to some degree correct in her observation—that during the Partition, Jhumia people were unprepared to face their new situation. She has pointed to, that a main reason was the British isolation policy and the role of the Circle Chiefs, who were not able to forward a joint recommendation, uniting their respective hill areas.¹⁰⁵

The final result was that the solution that few Jhumia wanted was chosen: the CHT became part of Pakistan in August 1947. Hence, I will in the following section discuss how this extraordinary political turn has come to influence the Jhumia land rights and livelihoods in both more and less obvious ways.

4.2. The role of the State of Pakistan on the hill people in the CHT from 1947-1971

The officially and ceremonially marked incorporation into Pakistan resulted in a mixture of reactions. In Rangamati, the Chakma majority (but not supported by the Circle Chiefs) area hoisted the Indian flag, while in Bandarban, a Marma majority area, hoisted the Burmese flag, under the leadership of some Marma hill leaders. Thus, the initial days of the relationship between the Jhumia and the Pakistanis was already strained. The Pakistan government lowered the Indian and Burmese flag, represented by the Baluch Regiment. Because they had hoisted the mentioned Indian flag, Jhumia were branded as 'pro-Indians.' The fact that they had also hoisted the Burmese flag did not result in similar accusations of being 'pro-Burmese'.

Thus, it seems clear that the Pakistanis had a pre-conceived idea of the Jhumia as pro-Indian, as a reflection of their deep misgivings for their new rival, i.e. India. This

¹⁰⁵ Ibid , 35-36

categorization came to impact the process of political accommodation in Pakistani politics. The Pakistani leaders had a certain mindset towards the Jhumia, and in turn the people of the CHT became rapidly alienated from Pakistani politics.



Map-4.2. Location of Bangladesh and Pakistan (post-British India it was known as east and West Pakistan)
Source: <http://www.mapsofworld.com/south-asia-political-map.htm>

4.2.1. Islam, the constitution of the state of Pakistan and the nullified status of CHT

Pakistan was proclaimed as the Islamic Republic of Pakistan. The contours of Pakistani nationalism were to be defined on the basis of Islam. The declaration of Pakistan as being an Islamic country, as laid down in the Constitution, affected the relations between the new state and the heterogeneous citizenry of East Pakistan. Therefore, non-Muslim Pakistani citizens were de facto turned into second-class citizens.

In the Constitution, in paragraph 15(2), it is stated that only Muslims could hold the position of the head of state in the Islamic Republic of Pakistan. Thus, the above mentioned clauses affected both jhumia and non-jhumia peoples who adhered to Buddhist, Hindu, Christian and Shamanistic religions. Furthermore, the religious nationalism of the West Pakistani leadership had further biases. Also the vast Bengali Muslim majority population were considered as low-status “converted” Muslims, whose forefathers had been lower caste Hindus. Except certain high-ranking Bengali families, who could claim a prestigious pedigree back to Turkish or Afghan ancestors, most Bengalis were not considered to be ‘pure Muslims’.

Though the CHT was within the geographical boundaries of East Pakistan, administratively it was under the direct administration of the Pakistan central government. In the beginning, the CHT retained the special administrative status as an 'Excluded Area.' However, some years later, in 1964 the Constitution was amended. The status of the CHT was changed from that of an 'Excluded Area' to a 'Tribal Area,' which there were many also in West Pakistan. As part of the amendment, the Pakistan government withdrew Rule 52 of the CHT Manual about the special provision of the power of the District Commissioner to expel non-Jhumia from the area. Now, non-Jhumia was allowed to enter the hill region and to become residents for up to fifteen years. The rights to property for non-Jhumia Bengali was recognized by Rule 34 in the Manual 1900 Act.

4.2.2. Kaptai dam and the roots causes of the displacement of the Jhumia

The Kaptai Dam was considered one of the most important development projects for the industrialization of East Pakistan during the Pakistan period. The construction of Kaptai Dam was financed by the USAID (US Agency for International Development). Multipurpose benefits were expected; such as production of electricity (around 120,000 kwh) and flood control in the downstream of the Karnafuli River. In the context of the CHT, it was expected that the Dam, which entailed a huge artificial lake of 655 Sq. km., would increase the navigational facilities to inaccessible parts of the undulating hill areas with its high-quality timbers. The Dam reservoir was also planned to create ample opportunities for fish cultivation. However, it was expected to produce on 0.5 percent from the total demanded energy.¹⁰⁶ On the other hand, the impact of the Kaptai Dam, with its 655 Sq. Km. of water was the submerging of 22,000 ha /54000 acres of a large amount of the best cultivable land which amounted to 40 percent whereas 18,000 jhumia families were displaced.¹⁰⁷

This mass displacement was never taken under consideration. There was no social impact study conducted before the construction of Kaptai Dam. Hence, I will show here how the

¹⁰⁶ Amena Mohasin, 1997, 102-104

¹⁰⁷ Roy, Raj Kumari, Chandra, Land rights of the indigenous peoples of the Chittagong Hill Tracts, Bangladesh, IWGIA Document No.99, Copenhagen, 2000:95-96

jhumia were affected in the CHT in general and how the Chakma and Tripura people were affected in particular.

Table-4.1. Estimated acres of cultivable land and household according to valley areas

<i>Relocation area</i>	<i>Land offered</i>		<i>Household</i>	
	<i>In acres</i>	<i>% of total</i>	<i>Area number</i>	<i>in % of total</i>
<i>Kassalong</i>	10,000	40.0	2870	58.1
<i>Chengi Valley</i> ¹⁰⁸	3903	15.7	1405	28.4
<i>Myani valley</i>	1287	5.2	99	2.0
<i>Feni Valley and Ramghar</i>	3057	12.3	-	-
<i>Circulum-Rangunia</i>	747	3.0	200	4.1
<i>Karnafuli-Sangu interfluves</i>	374	1.5	183	3.7
<i>Sangu and Matamuhuri Valleys</i>	5433	21.9	181	3.7
<i>Total</i>	24,801	100	4938	100

Source: David E Sopher, 1963:355

On the above table has shown that there were 24,801 acres of land which was expected for the settlement of the 4,938 households out of 18,000 households. On the other hand, Chakma people were not interested in rehabilitating in the south CHT on the selected Sangu Matamuhuri valleys. American geographer David E Sopher mentioned that

‘Chakma were disinterested to move Sangu and Matamuhuri Valleys are quite, simply foreign lands to the Chakma. Normally they do not go there, and they express both contempt for, and fear of, the more primitive Mru, Khumi and Murungs among whom they would have to live and about whom they know little. The possibility of settlement in this area was never seriously considered by the Chakma.’¹⁰⁹

On the other hand, David E Sopher has mentioned that the Chakma were mostly interested in settling in Chengi, Myani –Kassalong area. Particularly the Chengi Valley Mauza appears to have been the area of greatest attraction for Chakma resettlement, to judge by the ratio of land available to families settling there: 1594 acres and 1351

¹⁰⁸ Chengi as well as Feni and Ramghar valley are Tripura concentrated area located at present Khagrachari district.

¹⁰⁹ Sopher, David E, 1963:355

families. That valley was formerly occupied by Tripura Jhumia, but during the past fifty years, Chakma and Mogh had moved northward, both as plough cultivators.¹¹⁰

Concerning the settlement, furthermore he stated that

‘There has not been a solitary interaction between a particular group of people and the environment. These have been complex interaction among different cultures regarding occupancy and use of a particular space, which suggests that interactions of this kind must be considered in any account of relationships between man and the land.’¹¹¹

Based on reliable informants it has come to be known that to rehabilitate the displaced peoples, the Pakistan government recruited “Refugee Amin” from the Chakma people to be a land surveyor and ordered them to find the untitled land (khas land). On the other hand, Tripura land was not registered nor had titles; therefore, Chakma people took all the good quality land from the Tripura. In this context, Chengi and fenny dwellers lost more than government estimated land. Native headmen were also helped by the Chakma with extortion. Therefore, due to the settlement or the compensation to the displaced group it has affected the native dwellers. On the other hand, due to various bureaucratic reasons, including corruption, only 2.6 million US dollars was dispersed to owners of plain land for compensation, out of the 51 million US dollar actually allocated.¹¹²

4.2.3. Approach on massive Kaptai Dam affected Jhumia people

In the rehabilitation programme, land ownership was identified based on so-called land entitlement. Jhumia in the affected areas in Rangamati were excluded from the rehabilitation programme, as they could not produce land deeds, which legalized their entitlements. The legal base was the CHT regulation of 1900 Act, in which only lowland was recognized as eligible for land titles. Moreover, Jhumia were considered to be ‘nomads’.¹¹³ However, about the problematic and contradictory notion of “nomadism” Amena Mohasin quoted Serajuddin that;

‘Their (jhumias) cultivation was of course nomadic, but contrary to widely-held opinions their “parent” villages were stationary. Quest for a suitable piece of Jhum land would take them to very considerable distance ... on the

¹¹⁰ Sopher, David, E, 1963:356

¹¹¹ Ibid, 1963:362

¹¹² Amena Mohasin, 1997, 103-104

¹¹³ Ibid, 1997: 104

Jhum land they would erect a hut and stay for the whole season to look after the crops. But when the season was over they would invariably return to their own villages.’¹¹⁴

What is striking in this citation is that the author is ready to admit that Jhumia had permanent villages, but chooses to put emphasis on their seasonal mode of dwelling near their lands, cultivated on a rotational basis in a rather extensive area. The so-called nomadic lifestyle of Jhumia was a wide-spread misconception among the bureaucrats and the aid people involved in formulating and executing the rehabilitation programme. Therefore, a combination of lacking an impact assessment and misconceptions about the nature of land rights among Jhumia caused mass dislocation.

4.2.4. Impact of ‘Development’ interventions on Jhumia

During the Pakistan period, Forest Industries Development Corporation (FIDC) was established based on raw produce from the magnificent forests in the hills. The products form the manufacturing industries (located at Rangamati in CHT). It has included paper, rayon, timber, pulp, plywood and match etc. The Pakistan government could not properly rehabilitate displaced Jhumia; however, government rehabilitated Bengali from the plain land. Due the government rehabilitation programme Bengali population in CHT has increased from 26,000 to 119,000 between 1951 and 1961.

The Bengali political leaders welcomed this large-scale immigration. For them, resource exploitation in what they saw as a very thinly inhabited hill area, with riches just waiting to be extracted, was a natural and desirable thing. The increasing economic plight of the Jhumia was not a concern for the political elites, be it in East or West Pakistan. Moreover, Bengali was the majority group in East Pakistan and saw them as having every right to take advantage of the situation in this underdeveloped hill region. The whole economic policy in the new Pakistan was underpinned by rhetoric in the name of ‘national development’ and ‘national integration.’ Thus, this ideology of nationalism, based on the West Pakistani economic dominance was imposed on the East Pakistan people, whose elites mostly were advantaged as to oppose their exploitative situation.

The general economic description between the two wings of Pakistan is that East Pakistan was allotted only 25 percent funding for development projects. However the

¹¹⁴ Ibid ,1997:103

total population in East Pakistan was 56 percent of the total population in Pakistan. Not only has East Pakistan contributed 60 percent in the national revenue.¹¹⁵ On the other hand, within East Pakistan, the CHT were economically neglected. In the industrial development sector in the CHT, Jhumia were neglected by the Pakistan development policy-makers. On the development issues Willem Van Schendel et. al stated as ‘the state elite of Pakistan saw the Chittagong hills as a useful part of the country because it had exploitable natural resources. When they thought of the area, they thought of timber, bamboo, hydroelectric power, rubber and oil.’¹¹⁶ On the other hand, local people were not considered useful resources. The exploitation of natural resources of the Chittagong hills was not entrusted to them but to foreigners, West Pakistanis and Bengalis. Therefore, alienation of the indigenous peoples due to the massive Kaptai Dam project, Bengali rehabilitation, and the discrimination of the Jhumia in the job sectors in the industries led to the Jhumia revolting against the Pakistan government.

4.3. History of the Revolt of Jhumia during the Pakistan period, 1947-1971

In 1957, some political leaders and many young people started to organise themselves politically against the Pakistani government’s policies, which Jhumia experienced as invasive and objectionable. The formation of Pahari Chatra Shomity (Hill Students Association) was the first organization to launch protests against political and economic repression in the Hills prior to and in the wake of the Kaptai hydroelectric project. The decision to abolish the district’s special status was also condemned. In the decade which followed, both a new local nongovernmental organization (the CHT Welfare Association in 1966) and a left-wing political party Rangamati Communist Party (RCP) in 1970 were also formed, with the aim to address pressing socio-economic needs.

However, all these political platforms and emerging organizations had to be of a clandestine nature due to imposed bans on political activities in the CHT-region which were composed of Non-Regulated Districts, as defined by the 1900 Manual. The formation of RCP bears testimony to the challenge against the Bengali bureaucracy who completely dominated the CHT administration and the constitutional changes they had

¹¹⁵ *ibid*,1997:97

¹¹⁶ Van Schendel, willem, et al, 2001:212

pressured for the approval of. In addition, the RCP was also a challenge towards the semi-traditional native power structure in the hills, in particular, the circle chiefs and Headmen whose privileged status made them unwilling to protest against the government's CHT-policies. During the Pakistan period, the circle chiefs were conspicuously silent about the massive destruction and dislocations caused by the Kaptai Dam project.

B. The turbulent Bangladeshi period: 1971-1997

4.4. The factors of the liberation movement in the East Pakistan

As I discussed before, the Bengali population at large was alienated from the Pakistani 'Islamic' brand of nationalism. The great majority of Bengalis in East Pakistan became disadvantaged in the national development process, steered from the capital in West Pakistan. During the Pakistan period, East-Pakistan's share of military official posts was 5 percent. They had 30 percent of the civil-bureaucratic elite and 10 percent of the entrepreneurial. From the beginning, Urdu (a major indo-European language, strongly influenced by Arabic and Persian language) became the only state language.

Therefore, Bengalis in East Pakistan naturally demanded recognition of their mother tongue Bengali as a state language. Due to the Bengali languages movement, the constitution of Pakistan recognized the Bengali languages in 1956.¹¹⁷ However, the declaration of Martial Law in Pakistan on 7 October, 1958 General Ayub Khan, the Commander-in-Chief of the Pakistan Army had taken over the administration. Political parties and political activities were banned. Moreover, Ayub's perceptions of national unity and ideology were motivated against Bengali nationalism and culture. He himself claimed to his Islamic followers that all the east-Bengali should be branded as Hindu. Pakistani president Ayub Khan stated:

'East Bengalis...probably belong to the very original races. It would be no exaggeration to say that up to the creation of Pakistan, they had not known any real freedom or sovereignty. They have been in turn ruled either by the caste Hindus, Mughals, Pathan or British. In addition they have been and still are under considerable Hindu cultural and linguistic influences.'¹¹⁸

¹¹⁷ Mohasin, Amana, 1997:40

¹¹⁸ *ibid*, 1997:42

The application of his comments above was found to be due to taking a military emphasis on Bengali linguistic nationalism. Therefore, the East Pakistan major political party Awami League leads by Sheikh Mujibur Rahaman started a Six Point movement. On the basis of Bengali nationalism, the Awami League won a landslide victory in the general elections of the 1970s, and gained 160 seats out of 162.¹¹⁹ Though the Awami League won the election West Pakistan, the leader did not want to share power. On the contrary, on the 25th of March in 1971, the Pakistan Military attacked East Pakistan (present Bangladeshi) civilians. After a nine month liberation war, Bangladesh won independence in December, 1971.

4.4.1. Liberation war and the role of Jhumia

During the liberation war in Bangladesh, the Jhumia were suspected to be the supporters of West Pakistan. Mukti Bahini (East Pakistani military force) moved against the indigenous peoples in the Khagrachari in the CHT and there was 16 Jhumia who were killed by the Mukti Bahini on 5 December, 1971. The incidents launched a series of violations in the CHT against Jhumia people; this violence lasted the entire month of December. The real picture of the Jhumia sympathies and actual support was more complex. Many from the CHT participated in the Liberation War, under the leadership of the Mong Circle Chief. However, Jhumia as a whole was branded as “pro-Pakistani.”. Therefore, many of the freedom fighters from the hills were not awarded after the bloody Liberation War (as example, Rono Bikram Tripura and Asok Mitra Karbari). Further, more Bengali liberation fighters, Mukti Bahini, continuously entered the CHT and killed the Jhumia. Due to attacks on the Jhumia in the early tumultuous phase, Mong Circle Chief and the Charu Bikash Chakma appealed to stop the violence in the CHT to the President and Prime Minister Sheikh Mujibur Rahaman. Sheikh Mujibur Rahaman treated the ensuing violence as natural in the post-war situation. This set in motion an alienation process from the very early phase of the new state. This alienation also grew further, as the constitutional demands set forth by the leaders of the Jhumia during the formulation of the constitution in 1972 were rejected.

¹¹⁹ Ibid,1997:44

4.4.2. Constitutional demands and state responses

The Constitution of Bangladesh was formed in 1972. During the political legislative process of formulating the Constitution, hill leader M.N. Larma demanded four points during the constitutional formulation, such as;

- Recognition of the indigenous peoples constitutionally;
- regional autonomy, based on a separate legislative body;
- the retention of the provision of the 1900 Regulation; the provisions restricting amendment of the CHT Regulation;
- The continuation of the offices of tribal chiefs and the imposition of a ban on the influx of non-indigenous in the CHT.¹²⁰

However, these constitutional demands were wholly rejected by the interim government. In the Constitution of Bangladesh (its articles 3 and 6) only one language, Bengali and one Bengali nation are enshrined as the basis for the nation. None of the other (more than 40)¹²¹ ethnic nationalities who were citizens of the country were given any recognition. Bangladesh, in other words, declared itself as a Uni-cultural and Uni-lingual nation state in a parliament session on the 23rd of January, 1974.

Therefore, M.N. Larma, one of the parliament members from the CHT, has argued in the parliament:

‘We are deprived of our rights, the country has become independent but we continue on a curse life. However, the British had given recognition to our distinct identity and it was continued in the Pakistan Constitution in 1962.¹²²

Hence, the leaders of the Bengali nationalist movement and the “father of the new nation” Sheikh Mujibur Rahaman, characterized the Jhumia demands as secessionist, and demanded the Jhumia to integrate into the Bengali mainstream.¹²³

¹²⁰ Internal Displacement Monitoring Committee,2006,29 see on [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/6BD2112514F2D20EC125713E00361B40/\\$file/Bangladesh%20special%20report%20March%20%202006.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/6BD2112514F2D20EC125713E00361B40/$file/Bangladesh%20special%20report%20March%20%202006.pdf)

¹²¹ According to the Bangladesh Indigenous Peoples Forum Indigenous Ethnic groups in Bangladesh were 45. See: Solidarity,2007:135

¹²² Amena, Mohasin ,State Hegemony, The Chittagong Hill Tracts ; life and nature at risk;2000: 64 Philip Gain(ed.)

¹²³ Ibid

4.4.3. Imposition of the new dimension of the doctrines of “terra nullius” in the hills and the Bengali settlement

As discussed earlier, during the British period, the whole forested tract called CHT was declared the property of the British Crown in 1868. Successive Bangladesh governments also claimed the hill land as state land in 1979, with the intent to facilitate the planned increased Bengali immigration. However, measuring the cultivable land and the population during 1967, the East Pakistan Agriculture Development Corporation stated unequivocally:

These political and legislative changes became the starting point for a massive government-launched and sponsored settlement programme. The total 400,000 Bengalis were settled in the CHT in three distinctive phases between 1979-1984. In the first phase, 25,000 families were allotted five acres of land and 3,600 taka in cash each family. In the second and third phase, govt. granted land and money were reduced from 5 acres land to 2, 5 acres and from 3600 taka to 700 for per single family.¹²⁴ Each Bengali settler's family has been receiving 86 kg rice per month since 1980s.

Hence, there are 28,000 tonnes of food grains or which is amounts in a price at a cost of TK. 28 cores (USD 4.8 million) per year was provided to the Bengali settlers;¹²⁵ supported by the World Food Programme as well as being aided by the Australian and Canadian governments.¹²⁶ Furthermore, the government of Bangladesh also passed a decision to increase the number of Bengali settlers receiving families to 55,000.¹²⁷ My key informant on this matter, who has followed closely the settlement programme has said that the Bengali settler communities have benefited from generous assistance from the army for home, sanitation and school construction and for health care facilities etc.

4.4.4. Central land characteristics of the CHT

In the 1960s, the Canadian Company Forestall Forestry and International Limited measured the amount of land and its utility in the CHT. The report delivered by the Canadians documents in detail the characteristics of the land in the CHT-sub-region.

¹²⁴ Land policy and administration in Bangladesh: A literature review, 2003,30
<http://www.carebd.org/land%20policy%20and%20administration.pdf>

¹²⁵ Ibid,2005:378

¹²⁶ The Chittagong Hill Tracts Commission, 'Life is not Ours' land and human rights in the Chittagong Hill Tracts, Bangladesh, Update-4, 2000:46

¹²⁷ The indigenous worlds, IWGIA,2006:371

Table-4.2: Land characteristics in CHT

<i>Class</i>	<i>Type of land and its utility</i>	<i>Amount (acre)</i>	<i>%</i>
A	Suitable for wet-rice cultivation	76,466	3.2
B	Suitable mainly for horticulture and only partly for rice of terraced	67,871	2.9
C	Suitable for horticulture and tree crops with intensive soil conservation	3,66,622	15.5
C-D	Intermediate class between C and D	32,024	1.4
D	Suitable only for forestry and less than 10% of class D land was suitable for horticulture.	18,16,930	77
	Total	23,59,913	100

Sources: Tripura, P and Harun, A; 2003; 32

As presented in the above table 3.2 percent of the land, 76,466 acres of land, was suitable for wet-rice cultivation and class B and C lands were 18.4 percent of the land that was suitable for horticulture. However, on the census they had not mentioned that it was suitable for jhum cultivation, only that most land in the CHT was only suitable for cultivation or homestead.

Therefore, during the Bengali settlement period without having suitable land, the government took the Jhumia people cultivable land, gardens, and occupied villages by applying military force. In this case, the indigenous peoples in the CHT became refugees internally and externally. External refugees have moved to India and Myanmar and internal refugees were bound to move either to remote places for security and some took any other comparatively secure place. On the other hand, the government had 24, 89, 663 acres (both are agricultural and non-agricultural land) of vacant land which exists in the plain.¹²⁸ Hence, for the question of the rehabilitation of the landless Bengalis, it was possible to settle that vacant land. Willem Van Schendel et al refers to the East Pakistan Agricultural Development report as: ‘in 1967 about 190,000 acres are being cultivated by about 475,000 persons, which mean a density of 16, 00 persons per square mile of cultivated land. The emptiness of the Hill Tracts is, therefore, a myth.’¹²⁹

¹²⁸ Land policy and administration in Bangladesh: A literature review, 2003,30
<http://www.carebd.org/land%20policy%20and%20administration.pdf>

¹²⁹ Van Schendel, Willem,2001:212-213

However, for the settlement of the Bengali in the hills, article 34 under the regulation of 1900 Act was amended. The land ceiling also was reduced from 25 acres to 5 acres, though the land ceiling in the plain land was 33.3 acres for the Bengali settlement in the CHT.¹³⁰ Though, in the questions of Bengali settlement, Bangladeshi government claimed that most of the new Bengali settlements in the hills are on government Khas land.¹³¹ However, during the settlement period, Bengali settlers were settled on homestead land and in villages and gardens occupied by the Jhumia. Thus, the government's practice of claiming that this was Khas land is from a legal and human rights perspective no doubt questionable. More detailed documentation of how civil and military authorities have bypassed existing laws and the scale of this land grabbing process needs further research.

What is obvious is the fact that much of this land was used for jhum cultivation, which is a major explanatory factor. I have already discussed that the Jhumia have not been able to get formal land entitlements to lands for jhum cultivation though they have been under extensive use and control of the Jhumia for many generations. During the height of the settlement programme, the government provided land of 5 acres each to the settler's family, as mentioned earlier. The mauza headmen, whose legal authority (as by the 1900 Act) also included approval of settlement of non-natives, were blatantly bypassed. Some headmen were also bribed, others were threatened to silently accept the massive influx of land hungry settlers. This massive use of undemocratic decision-making, and bypassing existing legislation, and the use of military force since independence in 1971, nurtured in the Jhumia resistance and hatred towards the Bangladesh military. On the other hand, due to the settlement Programme the ratio between Jhumia and the Bengali has reversed. By the increases of population in the hills, ratio of Jhumia and non-Jhumia has stood as;

¹³⁰ Mohasin, Amena, 1997: 114-115

¹³¹ The term of khas land are identified as all untitled land in CHT. However, most of the Bengali were settled in the valley land and indigenous peoples were lived their.

Table-4.3: Population growth rate and ratio between the Jhumia and non-Jhumia people

<i>Years of the census</i>	<i>Population growth rate with number and percentage</i>		<i>Total</i>
	Hill people	Bengali people	
<i>1892</i>	61,957 (98.26%)	1,097 (1.74%)	63054
<i>1901</i>	116,063 (92.98%)	8,762(7.02%)	124825
<i>1951</i>	261,538(90.91%)	26,150 (9.09%)	287688
<i>1956</i>	300,000 (91.91%)	30,000(9.09%)	330000
<i>1981</i>	455,000(61.0%)	290,000(38.03%)	745000
<i>1991</i>	501,144(51.43%)	473,301(48.57%)	974445

Sources: Swapon, Adnan, 2004; 15.

As the demographic numbers in the above table show, a dramatic shift of balance is underway, the Jhumia are becoming a numeric minority in their own native territory within one decade.

4.5. Dislocation and Revolt of the Jhumia against the state

The Jhumia formed a new political party called Parbattya Chattagram Jana Samhati Samiti (PCJSS), on the 7th of March, 1972. As a counter-movement to the homogenous and exclusionist Bengali nationalism, they started to create the ideological underpinnings of “Jumma nationalism”. The main target for establishing the Jumma Nationalism was to unify all ethnic groups in the CHT under the PCJSS. In this political mobilization process, PCJSS emerged as the main mouthpiece for the Jhumia. The fact that PCJSS was banned during the military regime (the post Mujib period), made any political solution nearly impossible, and led to a dramatic situation of a civil war between the military and the military wing of PCJSS, the Shanti Bahini (Peace Force). PCJSS had to organize itself as an underground movement. Jhumia from all the native groups rallied around this forbidden political movement, even though the direct recruitment of cadres to the insurgency army was highest from the areas which felt the brutal military and non-military measures the most. PCJSS, with its arms wing Shanti Bahini was led by M.N. Larma, who fought against a well-equipped Bangladeshi army.

4.6. Military deployment

The Bangladeshi government employed their military on a massive scale in the CHT since 1973. The CHT was declared a military area and started operation Programme in the name of ‘Operation Davanol’ or Operation Wildfire, the Bengali settlement period in the 1980s. The total picture of the state security forces was employed in the CHT as the 24th Infantry Division of Bangladesh Army was in charge of the CHT. It set up as many as three full fledged cantonments (Dighinala, Alikadam and Ruma), four brigade installations (at three district headquarters and Guimara), one Naval Base at Dhalyachari (Kaptai), several schools for jungle welfare, and more than 545 base (temporary) camps for the army, Ansar, APB and VDP.

It is estimated BDR, APB, Police, Ansar and VDP forces have been deployed in different strategic places of the CHT of more than 100,000. The CHT Commission has given an estimate of the security personnel of the CHT.

Table-4.3 State security force in the CHT

<i>Armed Forces</i>	<i>Strength</i>	<i>Number of personnel</i>	<i>Remarks</i>
<i>Army</i>	24th Infantry Division	80,000	
<i>BDR</i>	6 Battalions	25,000	
<i>Ansar</i>	4 Battalions	8,000	
<i>Navy</i>	1 Battalion	1,500	
<i>Total</i>		114,500	

Sources: PCJSS a political organization of the Jhumia Indigenous Peoples in CHT

In addition, the army reportedly recruited armed groups known as Village Defence Parties (VDP), and provided them firearms to use against the Indigenous peoples.¹³²

In the name of Operation Wildfire or Operation Davanol in the national budget, 15 percent of the budget was allocated for military purposes. By the investigation of the IDMC it was known that one-third of the Bangladesh military was deployed in the CHT

¹³² Sources, Parbattya Chattagram Jana Somhati Somity a political organization of the jhumia in the CHT.

and the government had been reportedly spending around 125 million USD per year.¹³³ This programme, with its mega-budget, has been subjected to strict security restrictions, and was not approved of in any open parliament sessions. In addition, food, housing, and infrastructure development for the military was placed elsewhere in the national budget, including into the development part of the budget. During the insurgency period in the 1980s, also the British Army (SAS unit) directly joined in the CHT in order to support the military operation.¹³⁴

The declaration of operation Davanol or Wildfire, under a state of emergency, made it possible for the military to violate human rights on a massive scale. In the beginning, Tripura people were the prime target of the security forces. The reason for attacking the Tripura people was that they were identified as Hindu. In reality, most of them were practicing Shamanistic religion or a syncretistic religion with both indigenous elements and elements from Hinduism. Following the time, the military extended its military operations to other Jhumia territory.

One estimate indicates that in 1981 alone, approximately 10,000 jhumia were killed.¹³⁵ Furthermore, he concluded that Bengali settlements caused mass-scale homelessness and turned the Jhumia into internal and external refugees. As much as 100,000 people were forced to flee from their villages, among them more than 50,000 jhumia were bound to move into India and Myanmar.¹³⁶ The main purposes of the Bengali settlement, the Bangladeshi scholar Swapon Adnan has argued, was a Bengali settlement policy as part of a demographic engineering policy, using Bengalis as a human shield, in order to assimilate the Jhumia, through islamization and massive settlement of Bengali Muslims from the plains.¹³⁷

On the other hand he stated that settlements of the Bengali migrants became prime objects of attack, constituting “soft targets” as compared to the “hard military ones” to the Shanti Bahini (SB). The aim of such violence and killings in the settler villages was to discourage the Bengali migrants from staying in the CHT and make them return to the

¹³³ Internal Displacement Monitoring Committee, 2006:39 source: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/6BD2112514F2D20EC125713E00361B40/\\$file/Bangladesh%20special%20report%20March%20%202006.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/6BD2112514F2D20EC125713E00361B40/$file/Bangladesh%20special%20report%20March%20%202006.pdf)

¹³⁴ Mey, Wolfgang, 1984; 167

¹³⁵ Adnan , Swapon, 2004:30

¹³⁶ Mohasin, Amena,1997:115

¹³⁷ Adnan ,Swapon,2004:29

plains.¹³⁸ Hence, due to the state policy of the creation of the military deployment, the civilians among Jhumia and Bengali settlers paid with their lives.

On the other hand, Government also took the several steps to control the insurgency movement. As for example, in 1986 a general amnesty to cadres from the Shanti Bahini was announced. Therefore, 2,294 Shanti Bahini cadres surrendered within a couple of years.¹³⁹ The main purpose of the declaration of the general amnesty for the Shanti Bahini was to reduce the state massive military expenditure and weaken the Jhumia people's movement in 1985 and declare it a Special Economic Area. Significantly, the stated aim of the declaration of a Special Economic Area was the assimilations strategy in the name of the integration of Jhumia and Bengali settlers.

Moreover, the state was tried by different tactics to isolate the PCJSS movement from its support base, by providing the financial and other logistics support to the Jhumia. Thus, a “split and rule” policy was practiced. On the other hand, the state had supported the Mro people so they could form their own military group, the Gorom Bahini, who opposed the Shanti Bahini. The Gorom Bahini was provided the arms and financial support up to 2005.¹⁴⁰ The Peace Accord was finally signed after a lengthy process of negotiations and sustained international pressure to established peace and development in the CHT. In the Accord, CHT was recognized as a ‘Tribal Area’ and established indigenous people's led institution and gave the provision to form a Land Commission to solve the land conflict.

4.7. Chapter summary

In the above discussion, it was found that the resources from the CHT are the prime target of the state. To extract the resources Jhumia was the prime target of the violation of human rights. Jhumia were massively dislocated, both during the Pakistan and Bangladesh periods. The impact of the partition of India was that the special area in the Pakistan Islamic state of CHT had become marginalized and dislocated and met with several genocides due to the state influence of ethno- religious politics. Those state policies became more active during the 1980s due to the utilization of military forces against the civilians. Denying the existence of the Jhumia in the Islamic state, both in the

¹³⁸ Ibid,2004:30

¹³⁹ Ibid, 2004 : 30-32

¹⁴⁰ The Chittagong Hill Tracts Commission, 2000:38-39

Pakistan and Bangladesh period has giving their blood and tears in their every day life. However, the CHT Accord between the Jhumia and the Bangladesh government in 1997 came into the reality to recognize the rights of the indigenous peoples land rights and their existences. How far land rights have been recognized and what the trend is in the post- accord situation in the CHT will be discussed in the next chapter.

CHAPTER FIVE: CHT-ACCORD, EMPOWERMENT AND LAND MANAGEMENT, 1998-2007

In this chapter, I will discuss the implications of the CHT Accord for land management and for the political empowerment process, especially for land being controlled by the Jhumia people. As I had mentioned in the previous chapter, the CHT Accord was signed 2nd December 1997, between the PCJSS and the Bangladesh government. In compliance with the Peace Accord, more than 1,900 members of the PCJSS and Shanti Bahini surrendered and handed over their arms.¹⁴¹ What changes in the legal context did the Peace Accord result in? And how has the Peace Accord affected the indigenous peoples land management practices, including the Jhumias' land management? I will attempt to address these pressing questions in this chapter.

5.1. The Post-Accord administrative structure including land management

In the Accord, the CHT region has been recognized as distinct area, by using the category “tribal area.” A distinct administrative structure has formed under the Accord. The present main state administrative structures are the Ministry of the Chittagong Hill Tracts Affairs (MoCHAT); Chittagong Hill Tracts Regional Council (CHTRC) and Hill District Councils (HDC). The already existing Chittagong Hill Tracts Development Board (CHTDB) formed during the 1980s for the development of the region and was also included under the CHT Accord. Hence, the highest tier in the administrative structure is the Ministry of the Chittagong Hill Tracts Affairs (MoCHAT). Next has comes the Regional Council where administrative power is held at the regional level, with the Chittagong Hill Tracts Regional Council as the administrative body. In each of the districts in the CHT, a Hill District Council is the executive organ for land issues and for other development efforts at this level. The post-accord administrative structure is shown below. I will also briefly outline the responsibility structure between the different levels.

¹⁴¹ The Chittagong Hill Tracts Commission, 2000:23

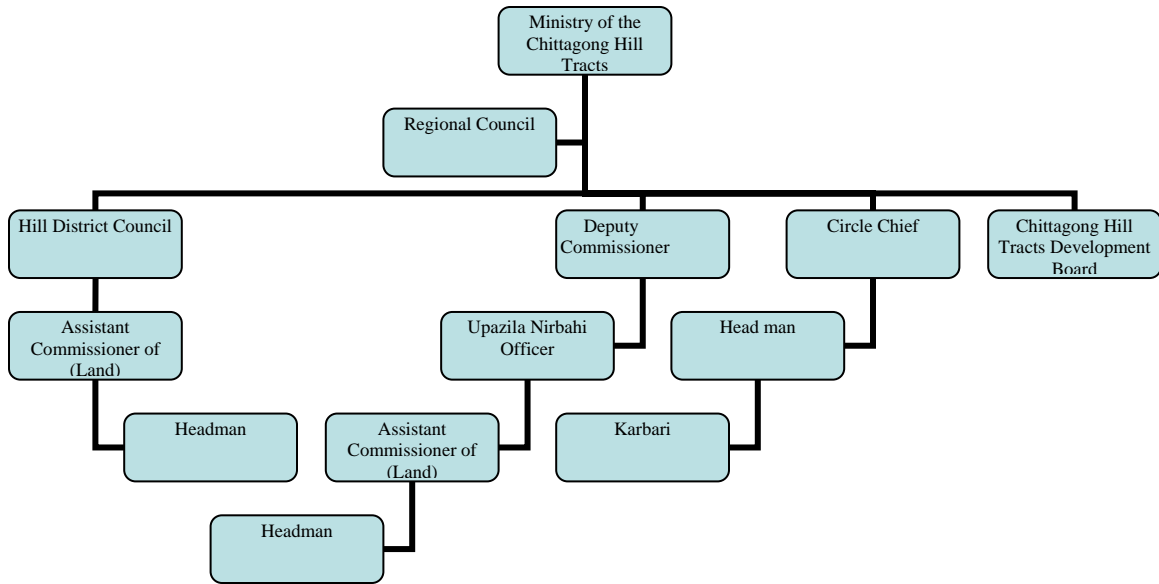


Figure 5.1: Post accord administrative structure in the CHT

5.1.1. Ethnic distribution in a new administrative structure

a) Ministry of the Chittagong Hill Tracts Affairs (MoCHAT)

The Ministry of the Chittagong Hill Tracts Affairs is to be headed by a minister who should be a native Jhumia. However, during the recent four-party alliance government (2001-2006) MoCHAT was directly led by the Prime Minister. The native top political position was in this period at the level of Deputy Minister. This direct rule by the PM has raised several concerns to the Jhumia people.

b) Chittagong Hill Tracts Regional Council (CHTRC)

At this regional level, the regional council as already mentioned is the highest administrative body. The main role of the regional council is coordination and supervision on the three hill districts. Based on the CHT Accord in 1997, the provision for the formation of a Regional Council was passed in 1998. The functions of the Council are described in article 22 on the Accord. These functions include overall supervision and coordination of all development activities under the Hill District Councils and all other matters entrusted to them. The role and functions of the regional council are as follows;

(a) Provided that if the Regional Council, during supervision and coordination under this section, has any dispute on a matter with a hill district council or with more than one hill

district council, then the decision of the Regional Council, under this Act, shall be final; (b) supervision and coordination of the local councils including municipalities; (c) overall supervision and coordination of the Chittagong Hill Tracts Development Board set up under the Chittagong Hill Tracts Development Board ordinance, 1976 (LXXVII of 1976); (d) supervision and coordination of the general administration of the hill districts, law and order and development; (e) issuing license for setting up heavy industries in hill districts in keeping with the National Industrial Policy; and finally (f) conducting disaster management and relief work and coordinating NGO activities.¹⁴² However, the above provision of the rules and regulations has not yet transferred. Hence, RC is not effectively functioning to coordinate with the DC and other administrative and development organs. However, CHTRC consists of distinct ethnic groups; all of them have a mixed composition of Jhumia and non-Jhumia. Whereas Chakmas and Bengalis each hold one-third of the post, the remaining nine ethnic groups hold only one-third of the posts.

Table-5.1. Composition of the members in Regional Council

<i>Sl. No.</i>	<i>Position</i>	<i>Ethnicity</i>	<i>No. Of post</i>
1.	Chairman	Indigenous	1
2.	Members	Chakma (male)	5
3.	Do	Marma	3
4.	Do	Tripura	2
5.	Do	Mru/ Tanchangya	1
6.	Do	Bawm/Chak/ khayang/Khumi/ Pankhua	1
7	Do	Chakma (women)	1
8.	Do	Non Chakma (women)	1
9.	Do	Bengali (men)	6
10.	Do	Bengali (women)	1
<i>Total</i>			22

Source: Chittagong Hill Tracts Commission, 2000:17

c) Hill District Council (HDC)

There are Hill District Councils in each of the hill districts. HDC's were formed in 1989 during the military dictator H. M. Ershad's regime. In the three hill district councils, Bengalis have the highest number of members, second are come Chakmas and Marma,

¹⁴² Ali Ahasan and Hasan Shafie, 2005:139-140

holding an equal number of posts. The rest of the posts were distributed among the other ethnic groups. However, since the HDC's were formed in 1989, about twenty years ago, there have not been any new elections. Presently, both of the HDCs were functioning only with five out of 31 members since 1995. In this case, the Supreme Court gave notice to the government to arrange an election, though it has not initiated any kind of election procedurals. However, the main condition for the election was to ensure the permanent resident voter list. The explanation for the permanent resident was for those who are living in the CHT, who own land and live there permanently; these conditions must be met to be included on the voter list. Hence, the Bengali settlers have no chance to be included in the voter list because they do not have land legally. For this reason, government has not taken initiative to create effective functioning of all the HDCs. And all the interim chairman and member are appointed by the government's own interests not by the Jhumia and permanent residents. Thus, the overall development activities and projects go by the government's direction. Hence, the purpose of the HDC has become an instrument to use the state policy against the Jhumia people.

Table 5.2: Ethnic representative on the Hill District Council

<i>Ethnicity</i>	<i>Hill District Council</i>			<i>Total</i>
	<i>Khagrachari</i>	<i>Rangamati</i>	<i>Bandarban</i>	
<i>Bam/Lushai/Pankhua</i>			1	1
<i>Chak</i>			1	1
<i>Chakma</i>	9	10	1	20
<i>Khumi</i>			1	1
<i>Khayang</i> ¹⁴³		1		1
<i>Lushai</i>		1		1
<i>Marma</i>	6	4	10	20
<i>Mru</i>			3	3
<i>Pankhua</i>		1		1
<i>Tanchangya</i>		2	1	3
<i>Tripura</i>	6	1	1	8
<i>Bengali (non-indigenous)</i>	9	10	11	30
<i>Total</i>	30	30	30	90

¹⁴³ On the Bandarban Hill District Council membership of the Khayang people were included with the marma. However, on the mentioned post were not specify.

On the other hand, the post as Chairman was especially reserved for Jhumia people both in CHTRC and HDC. However, due to not having had an election on the three district council RC's, they have also been functioning as interim for the last ten years. Because of the provision of the formation of the RC, it will be directly elected by the representatives of the three HDCs.

I have already mentioned that qualified Jhumia people will give their preferences for the Chairman post in CHTDB as well. However, during the four-party alliance government, Khagrachari parliament members, a Bengali person as well as vocal Bengali settlers were appointed to these posts. Hence, in the history of the CHTDB from 1978 to 2007, there were only three years where the Jhumia people served as representatives. Before the CHT accord, it was controlled by the military personnel as chairman. Due to the declaration of the state of emergency, the military again was appointed as chairman. In this case, the de facto administrative power was controlled by the state and not represented by the people from the CHT. It was found that the implementation process of the CHT Accord had no progress since the four party alliances government. Moreover, they violated the CHT Accord, which the previous government had implemented. Therefore, it has impacted the Jhumia people's empowerment process on land use and management by their own representative body. Now I will discuss the present land management mechanism in the CHT.

5.1. 2. Present structure of the land management in the CHT

Since the British period, the Deputy Commissioner has been the sole authority in charge of land in CHT (refer to my earlier discussion of the CHT Regulation of 1900 Act of article 34). In 1989, Hill District Local Government Councils were established and should—according to the provisions of land management—replace the authority of the Deputy Commissioner. The Hill District Local Government Councils were amended in 1998 after the Peace Accord, and have since been called Hill District Councils (HDC). The land management provision of the Hill District Local Government Council Act of 64, was replaced by the HDC, on the CHT Accord it was stated about the role and responsibility of the land management in article 26 as a) Notwithstanding anything contained in any law for the time being in force, no land, including those lands suitable for giving settlement, within the boundaries of Hill District shall be given in settlement

including giving a lease, purchased, sold and transferred without prior approval of the Council; provided that this provision shall not be applicable in case of areas within the reserved forests, Kaptai Hydroelectricity Project, Betbunia Earth Satellite Station, State-owned industries and factories and lands recorded in the name of government; b) notwithstanding anything contained in any law for being in force, no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council; c) the council can supervise and control functions of Headmen, Chainmen, Amin, Surveyor, Kanungo and Assistant Commissioner (land); d) fringe land in Kaptai Lake shall be given settlement priority to the original owners. The administrative structure of the land and forest management can be outlined in the following figure:

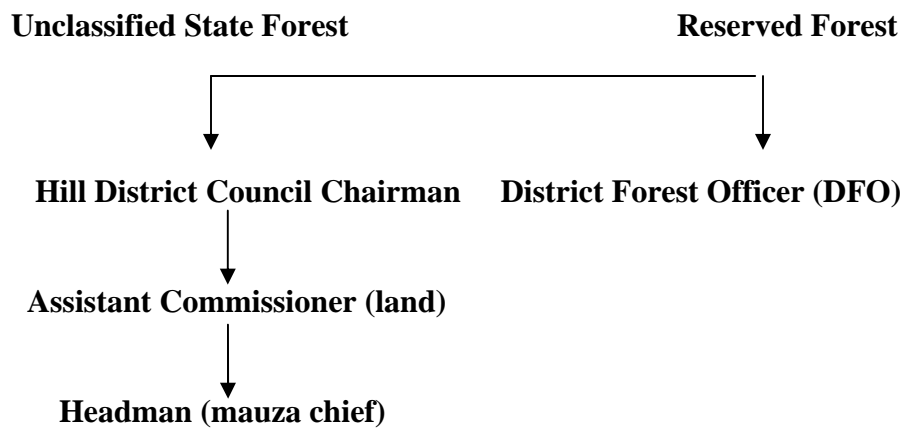


Figure 5.2: Land management structure in CHT under the new law of the post-accord regime

However, HDC has not taken place due to that they had not transferred the executive power for land management from the Deputy Commissioner (DC). Hence, land issues are dealt with under a dual administrative unit, resulting in numerous conflicts; the present existing land management for Unclassified State Forest (UCF) can be presented as follows:

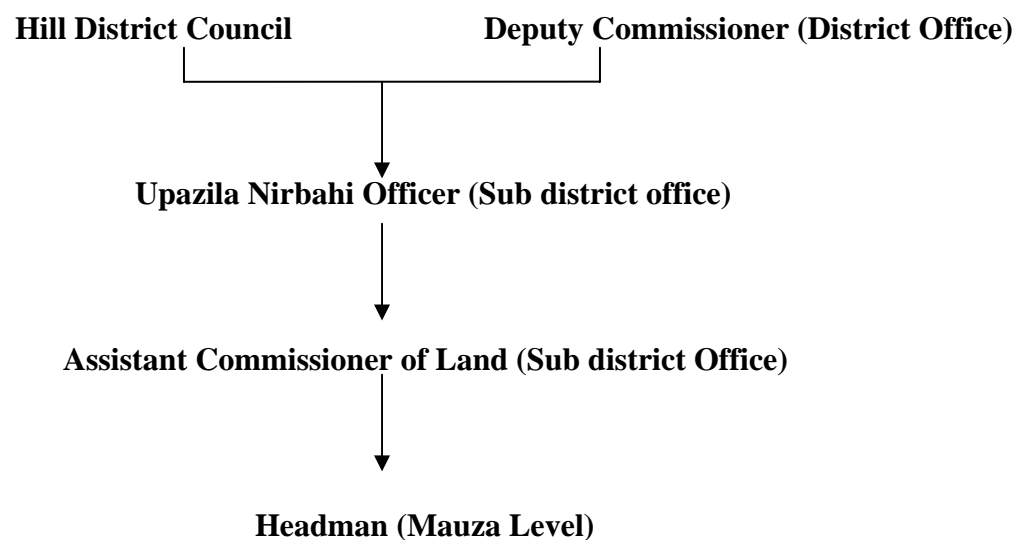


Figure- 5. 3: Present land administration in the CHT

5.1.3. Provisions for the formation of the Land Commission

As I have documented and analyzed in the previous chapter, Jhumia were displaced internally and externally during the most intensive large-scale Bengali settlement period in the 1980s. Large amounts of Jhumia land was occupied by Bengali settlers in this period. Therefore, the establishment of a Land Commission, with the task to settle the high number of land disputes, was a central element of the Peace Accord. The Act on Accord, Land Disputes Settlement Commission (Act 53 of 2001) passed in the national assembly in July 2001 without any discussion with the regional council. Jana Somhati Somity a political organization of the jhumia people has claimed that since the beginning the government has not shown the sincerity to implement the accord during their regime. Hence, it was also reflected in the formation of the Land Commission. Though, on the Accord in rule 13 the provisions have indicated the ‘of any law regarding the CHT is to be subject to discussion with the Regional Council and that will be done as per the advice of the council.’¹⁴⁴ The most pertinent objections from the side of the Regional Council has been indicated as; a) the arbitrary powers of the Chairperson to provide final judgment without consensus among others members; b) the exclusion of Jumma refugees

¹⁴⁴ The Chittagong Hill Tracts Commission, ‘Life is not Ours’ land and human rights in the Chittagong Hill Tracts, Bangladesh , Update 4, 2000:90

who returned to the CHTs under the 1992 repatriation agreement from the ambit of the Land Commission; and c) the exclusion of the internally displaced Jumma from the scope of the Act.¹⁴⁵

On the other hand, the government explained that the provision of the Land Commission was as follows:

‘A commission (land commission) will be constituted under a retired judge for the disposal of all disputes relating to lands. Besides settlement of the land disputes of the rehabilitated tribal, this commission will have full power to annual all rights of ownership on land and hills which have so far been given illegal settlements or encroached illegally. No appeal can be made against the verdict of this commission and the decision of this commission will be treated as final. This will also imply in case of fringe land’.¹⁴⁶

Hence, it has true that the rest of the members in the Land Commission will be ineffective among them CHTRC and HDC representative were the Jhumia representative. The category of the appointed members of five and the land commission committee were as;

Table 5.3.: List of the Land Commission members

<i>Sl. No</i>	<i>Institutional representative</i>	<i>Chairman/member</i>
1.	Retired judge, supreme court	1
2.	Circle chief (concerned)	1
3.	Chairman/representative regional council	1
4.	Divisional commissioner/additional commissioner	1
5.	Chairman of the district council	1
<i>Total</i>		5

¹⁴⁵ IDMC internal displacement monitoring centre, Bangladesh: Minorities increasingly at a risk of displacement, a profile of the internal displacement situation, March 2006:39 also see [www .internal-displacement .org](http://www.internal-displacement.org).

[http://www.internaldisplacement.org/8025708F004BE3B1/\(httpInfoFiles\)/6BD2112514F2D20EC125713E00361B40/\\$file/Bangladesh%20special%20report%20March%20%202006.pdf](http://www.internaldisplacement.org/8025708F004BE3B1/(httpInfoFiles)/6BD2112514F2D20EC125713E00361B40/$file/Bangladesh%20special%20report%20March%20%202006.pdf)

¹⁴⁶ The Chittagong Hill Tracts Commission, ‘Life is not Ours’ land and human rights in the Chittagong Hill Tracts, Bangladesh , Update 4, 2000:91

The Norwegian organization of Internal Displaced Monitoring Committee (IDMC) has indicated the reasons for the weak mandate of the Land Commission in the following way; ‘Awami league government passed the law just one day before handing power to the caretaker government’¹⁴⁷ However, the main purposes of the government under the Land Commission were the interest in controlling the power to serve in favour of Bengali settlers; whereas, Jhumia peoples chances of getting back their land have been reduced.

Later on, the Bangladesh Nationalist Party (BNP) led the four-party alliance, who stayed in power for five years, and they did not take any initiative to reform the Land Commission’s mandate. Because of during the CHT-Accord they opposed and were led by the main opposition party during that time. Not only was that, the four party alliances agenda to serve the Bengali Muslims interests. Since January 2008 there has been a caretaker government¹⁴⁸ in Bangladesh. This caretaker government is following the same policy. Hence, since the Land Commission has not been given an effective mandate and made operative, more than 90,000 internally displaced Jhumia people have not been rehabilitated after the Peace Accord was signed. Thus, given the large number of people affected by this deadlock in the Commission’s work, and the resulting large number of ongoing land disputes between displaced natives and Bengali settlers, many Bangladeshi and international observers are questioning the progress of the implementation of the CHT Accord.

5.1.4. Role of the Donors and INGOs for the promotion of the Land Commission activities

The administrative system for land management and other administrative systems are not functioning as spelled out in the Accord. More than a decade after the Accord was signed; there is rarely any progress in the implementation of the key provisions of the Accord. This is so, even if many NGOs and international donor agencies (both multilateral and bilateral) have stated their commitment to support implementing the Accord. As for example, The European Union (EU) and Norway have strongly

¹⁴⁷ Ibid

¹⁴⁸ This concept has introduced in Bangladesh due to ensure the fair election since 1996.and within the three month caretaker government has had to arrange the national election. However, the present caretaker government has in power since the 11th January in 2007. , the meaning of the caretaker government has not existed at the present government function.

encouraged an implementation approach giving much emphasis on empowerment of the Jhumias. The EU adopted a Resolution on 17th January 2001, which urged the Government of Bangladesh to accelerate implementation of the Accord, including giving more power to the Regional Council and establishing the much awaited Land Commission. The Resolution also reiterated its support for full resettlement and rehabilitation of the Jhumia refugees and other internally displaced, as well as for the possible resettlement of the 400,000 Bengalis settlers outside the CHT. However, the Resolution affirmed that any financial assistance would be conditional upon substantial progress in implementation of the Peace Accord and the need for culturally appropriate projects.¹⁴⁹

Hence, the EU has explicitly stated that it will not sanction any funds for development programmes in the CHT, until and unless the Peace Accord has been implemented and peace has returned to the CHT. In this context, EU representatives have further specified the EU member's states would consider granting funds for the region only when critical issues have been resolved; effective function of the RC, restructuring of the three Districts Councils in the light of the Peace Accord and a functioning Land Commission. Because of without the function of the above key institutions, development in the CHT is not able to be ensured and on the above fundamental issues, which are the central conditions for the development of the regions.¹⁵⁰

Among the bilateral donor agencies, Norway remains the only donor, which has demanded that regional government bodies must be established prior to large-scale investment, as set out in the Peace Accord.¹⁵¹ Therefore, Norway has expressed its willingness to take up development projects in CHT, either independently or jointly with the UNDP.¹⁵² The UNDP has taken responsibility for a special project component under the Chittagong Hill Tracts Development Facilities (CHTDF). This project is aiming to settle disputes among the internally displaced and among refugees; the Land Commission is given a key role in this project. This CHTDF project component's aim is spelled out in the following manner (section 4.4.1):

¹⁴⁹ The Indigenous World, IWGIA,2000-2001:296

¹⁵⁰ Ibid,2006:368

¹⁵¹ Ibid ,371

¹⁵² Ibid, 2005:381

‘With full knowledge, consultation and concurrence of government of Bangladesh, measures to strengthen the CHT Land Commission will be supported by the programmes as needed, including technical advisory service, training of staff, and logistical support. A Land Resolution Support Plan and Budget will be developed for this purpose in close cooperation with the Ministry of Land, MoCHTA and RC.’¹⁵³

The amount of the budget sanctioned for the component amounted to 234,100 USD. Another component under the CHTDF project was also to address the need to rehabilitate the Returned Refugees/Internally Displaced/Ex-combatants. The total budget for this component is 834,000 USD. The purpose of the component is to assess the situation of groups displaced by infrastructural developments and the internal conflict. Thus, this component aims at identifying their current location and socio-economic status, in order to ensure their full reintegration, based on their priority needs.¹⁵⁴ As yet, in spite of the precarious situation now and a year ago when I conducted my fieldwork, the above mentioned proposal has not been accepted by the government. Furthermore, the government has taken the decision to settle more Bengali settlers in the CHT, which is one of the factors of the violation of the CHT Accord. Hence, the much awaited initiatives to land institutionalize management (according to the Accord) have not taken place yet.

5.2. Analysis of the land ownership pattern and types of land use

On the basis of types of cultivation, land is classified as hilly land and valley land. Hilly land is mostly used for jhum cultivation and valley land has principally been used for plough cultivation. At present, there are dilemmas and conflicts in regards to the use of hilly land (in lower-lying sloping terrains) due to the growing population pressure resulting from a whole set of factors, not least of which the growing returnee population as well as the high fertility rate among the Bengali settlers. Ownership patterns in the CHT are generally based on the notion of private and communal land. As I have spelled out in earlier chapters, private ownership of land has for quite a period been established in both plain and hilly areas, while the practice of jhum cultivation is mostly on community land.

¹⁵³ United Nations Development Programme, Chittagong Hill Tracts Development Facilities (UNDP-CHTDF), see http://www.undp.org.bd/projects/proj_detail.php?pid=54

¹⁵⁴ Ibid

The trend towards privatization of land has, as shown in earlier chapters, taken place since the British period, when plough cultivation was strongly encouraged. Though land privatization was prohibited under the CHT Regulation (article 34(1)). However, plough land was exceptional since the British period. Any individual family can hold five to ten acres of valley land for the purposes of plough cultivation without paying any fees since the CHT Regulation 1900 Act. The present trend of ownership of community land is discussed below.

5.2.1. Land ownership patterns in the study village

At present, the amount of private land in CHT is increasing compared to the amount of land for jhum cultivation, as land use decisions are influenced by a range of factors, not least of which the increasing population pressure on the land. I have conducted field investigations in five villages in order to better understand dynamics that influence the present trends in land use and land ownership.

Background of selected villages

In the Chittagong Hill Tracts communities live in groups. Locally they call themselves Para. The smallest administrative unit of the Mauza is composed of several Para or village. However, many ethnic groups live side by side by the distinct village. The composition of the village varies in households in the distinct villages. Locally, village managers or the head is called Karbari. Each village is taken care of by the Karbari as the representative or Headman and DC. Generally, a village is composed of a single ethnic group. Even in the district headquarters, also many villages are composed of solo ethnic groups. It is commonly identified which villages have particular ethnic groups living in them. In this context I have chosen five distinct villages which are composed of a mono-ethnic group.

The reason for identifying the mono-ethnic village was to guide me towards analyzing the distinctive conditions or characteristics between the Chakma and Tripura; which is the criteria of the chosen villages I had analyzed in the methodological part. Hence, I selected five villages for my study; two were inhabited by Chakma and three by Tripura. The total number of Chakma households studied was 84 one is 57 and another one is 27 on the other hand the number of Tripura households was 183 which consisted of the three distinct villages and the distribution of households are consists with 101, 42 and 30

respectively. A total number of 267 households were included in the study. In the two studied Chakma villages, they had migrated during the Massive Kaptai Hydro electric dam in 1960s. In chapter three, I had discussed the major causes of the dislocation and its socio-economic and political impacts on the community. Both of the Chakma villages are located in the Khagrachari Sadar district. However, one of the Para was displaced during the Bengali settlement from the Matiranga sub-district. Hence, they settled at the present village. The distance from the district town to both the villages is 12 kilometers. Villagers in both communities used to walk 3 kilometer in order to be able to use public transportation. However, twenty years ago there was no communication system except by boat. Though, today the boat is not used by the community due to introduction of road. In both the villages, the community members have initiated their own village school, a non-government school. In this village, drinking water was partly fetched from tube wells, but surface streams (kuwa) were also used.

Also, the three Tripura villages are located in the Khagrachari District. Out of the three villages, two are located in the Matiranga sub-district and one in the district headquarters. Focus-group discussions revealed that two of the villages were established more than eighty years ago (around 1920-1930), while one had a settlement history of thirty years. Among them, two villages were displaced during the Bengali settlement period in the 1980s. Among them one of the village inhabitants were moved to Tripura State as refugees; however, they came back again to their own village one year later. And other village inhabitants moved in the Khagrachari Sadar from the different sub-districts and formed a village. On the other hand, the rest were rehabilitated with assistance from the Department of Forest during the 1980s. Though they have been living in that village before the rehabilitation programme and this village is located in the top of the hills. Hence, they are facing the drinking water source crisis, especially during the dry season from December to May when they had faced an extreme water crisis. They do not have access to electricity in either of the Chakma and Tripura villages. Those villages were as noted above, mainly inhabited by families who had been dislocated during the main Bengali settlement period.

Characteristics of land ownership

Land ownership in the Chakma villages varied; 54 households out of 84 had at the time of my investigations their own land. In terms of land categories, 17 landowning households owned only hilly land, while 13 owned only valley land that is suitable for plough cultivation. However, 24 households were owners of a combination of hill and valley land. Among the studied Tripura, 112 household out of the 183 were landowners. It has found that land ownership rate among the Chakma and Tripura were 64 and 61 percent respectively. Characteristics of the land ownership pattern were to some degree similar in the studied Chakma villages. However, in the studied Tripura villagers, most of the landowners led hilly land, which is only suitable for jhum cultivation or gardening. Only 12 households owned valley land out of the 112 Tripura households. The remaining 92 households owned hill land and 8 households disposed of a combination of hill and valley land. These patterns of land ownership in the studied villages are shown in the table below:

Table 5.4.: Land ownership pattern on the basis of household

<i>Types of Village</i>	<i>Types of land ownership household</i>			<i>Landless household</i>	<i>Total household</i>
	Hilly land	Valley Land	Hilly and valley land		
<i>Chakma village</i>	17	13	24	30	84
<i>Tripura village</i>	92	12	8	71	183
<i>Total</i>	109	25	32	101	267

Analysis of the patterns in land ownership

A total of 166 households, out of 267, were landowning, and as already remarked,, the majority of them owned hill land. During my investigations, it became clear that all the owners of hill land were not in possession of legal land documents; it was exceptional in the case of valley land owners. As I discussed earlier in this chapter, that from the British period (under the CHT Regulation 1900 Act on article 34[1]), it was prohibited to claim hilly land as privately owned. This prohibition did not extend to valley land. In fact, I have noted in earlier chapters that such private appropriation was actively encouraged by the British. Hence, this colonial legacy of land property laws, are very much reflected in

the land ownership patterns I have documented above. However, during the early 1980s, the government had changed the article 34 of the CHT Regulation of 1900 Act due to Bengali settlement and gave them five acres for each Bengali household; though, there was not any initiative to give land ownership to the Jhumia people. Moreover, the state had settled the Jhumia people, by showing the cause as being that they did not have land documents. The main cause of the present land conflict between the Jhumia and the Bengali settlers is from dual ownership. That is, Bengali settlers have land documents which are called “settlers Khatian” a land document for Bengali settlers which was introduced during the 1980s on the Jhumia people’s land. On the other hand, on the same land Jhumia people have been living before the Bengali settlement

5.3. Present context of the jhum cultivation and land rights

Jhum cultivation is predominantly practiced by the native groups of CHT, whom (as I have shown in earlier chapters) have through a four-decade long ethno-nationalistic process come to call themselves Jhumia. The essentials of jhum cultivation are clearing and burning of surface vegetation before planting. Plots located in hill forest lands are normally chosen for jhum cultivation. Shrubs and creepers are cleared, and smaller trees will be cut. After the clearing process, which usually takes place in the month of April and May, the cleared jungle is left to dry under the sun, in order to be burned later on. The “singing” raindrops of rain against the roof bring the villages into a state of activity for jhum cultivation. Each adult member carries to the field a small basket filled with mixed seeds of cotton, rice, melon, pumpkin, yam, millet, sesame, maize and vegetables. The above crops will be ready for harvesting from July to December.

These economic activities have, so far, not been sought, counted, or measured in the official agricultural censuses. Commenting on the census methods, the District Statistical Officer of Khagrachari District has stated of importance: “Shifting cultivation has not been included in the national statistical census on agriculture as not having an economic impotency in relation with GDP (Gross Domestic Product) or GNP (Gross National Product)”. Therefore, there is no official statistics on how many jhumia households in the CHT practice shifting cultivation. Though, again he stated it is very important to include it in the agricultural census due to the fact that most of the jhumia people are comparatively dependent on jhum cultivation.

The Bangladeshi scholar, Shapan Adnan has commented on the lack of knowledge about the economic structure in the CHT in the following way: ‘there is relatively little reliable quantitative data on the agrarian structure of the CHT.’¹⁵⁵ Land management and agricultural output of this indigenous production regime remains, in other words, invisibles, as it does not fit into the land use and output categories used for corresponding agricultural data from the rest of the country. Until the present, in household-based agricultural statistics, jhum cultivation is not recorded. The native anthropologists Prashanta Tripura and Abanti Harun have done agricultural research, based on conducting sampling research on four Para (two on Tripura in Khagrachari and two on Mro para in Bandarban). Hence, based on their sampling Para survey and the changing trend of the jhum practices, they have shown the jhumia people general ideas on jhum related jhumia family in the CHT. Their investigations have shown the number of jhum dependent families in the CHT, as shown in the table below:

Table 5.5: Jhum dependent ethnic groups based on family size and percentage

<i>Ethnic groups</i>	<i>Present approximate household (10% counted more than 1991 census)</i>	<i>Number of the household</i>	<i>Percentage of the jhum cultivated household (%)</i>	<i>Approximate jhum dependent household¹⁵⁶</i>
<i>Bawm</i>	7676	1476	70	1033-1107
<i>Chak</i>	2200	423	50	212
<i>Chakma</i>	263359	47883	15-20	7183-9577
<i>Khayang</i>	2145	423	50	206
<i>Marma</i>	156567	30699	50	7675-10745
<i>Mru</i>	24384	4204	85-95	3573-3784
<i>Pankhua, Lushai, Khumi</i>	5643	1085	80-90	868-977
<i>Tanchangya</i>	21132	4064	50	2032
<i>Tripura</i>	67381	12958	50-55	6479-7127
<i>Total</i>	550486	103,206		29,261-35765

Sources: Tripura and Harun, 2003:79

On the table it has shown that Mro jhumia people are intensively dependent on jhum cultivation. The causes of the jhum dependency are that they are all living in hilly parts of the CHT, particularly in the Bandarban, which is mostly considered to cover by hilly

¹⁵⁵ Adnan, Shapan, 2004:115

¹⁵⁶ The meaning of jhum dependent means those who consider it as their primary source of livelihoods.

land. The others cause is that, though they are the second largest Jhumia ethnic group, particularly in Bandarban they have less control of the land management than the Marma on the Mauza system in the Administrative Circle (see the table 3.2). On the other hand, the present causes of the less dependent on jhum among the Chakma were the higher education rate among the Jhumia. Another reason is that most valley land is situated in the Chakma Circle. Hence, Chakma people were adopted into plough cultivation. Hence in this context, the above mentioned jhum dependant households can be relied on this regard. On average, about 30 percent of the 30,000 households are dependent on jhum cultivation.

5.3.1. The Jhumia rehabilitation programme and the analysis of the trend of land ownership

The Jhum Control Division under the Department of Forest initiated in the early 1980s a rehabilitation programme for Jhumia peoples (particularly Tripura) in one of my studied villages. The project was called a Forestation and Rehabilitation of Jhumia Families on the USF or Unclassified State Forest and Reserved Forest Lands of CHT¹⁵⁷ and it continued from 1984 to 1995. The households rehabilitated under this project have each been distributed five acres. However, at the time of my fieldwork, it had been twenty-four years since these families were rehabilitated; I found that not a single one of the households had received the legal land documents. I talked with the villagers and the responsible officer under the Department of Forest about this pressing issue of undocumented legal ownership. The Forest Department officials said that the Department had put efforts into trying to provide the rehabilitated jhumia people with land ownership documents. Under this project, there was no specific provision for the land distribution to extended families. Hence, since the project started, twenty-two new households have increased over the last two decades. Thus, these households were in fact lease holding households. Hence, due to not having legal land ownership and the crisis of the jhum land there were seventeen households that had left to move to another area.

Similar to the above described rehabilitation programme, 6,487 households were rehabilitated under the Chittagong Hill Tracts Development Board under the Joint

¹⁵⁷ Tripura, Prasanto and Abanti Harun, Parbattya Chattagramer Jhumchase, Society for Environment and Human Development (SEHD), Dhaka, 2003:38

Farming Project and under a Rubber Plantation Project in the different phases. Both projects have provided alternatives to jhum cultivation since the 1980s. However, land entitlements have not been given to the respective project beneficiaries.¹⁵⁸

In the same period, a large number of Bengali settlers had settled in the same Mauza, where I had conducted the study on the jhumia rehabilitation project. I had in the previous chapter, discussed in considerable detail the Bengali settlement programme and its many stranded implications for increased competition for land, the lack of the rule of law and the escalating violent conflicts. Both locals in the CHT and the development agencies who work in the CHT stated in interviews with me that it has been much easier for Bengali settlers to get legal land registrations and the necessary documents than for rehabilitated jhumia households. Settlers who came in the 1980s have gotten so-called “Settlers Khatian” documents. The Bangladesh military has been entitled to issue these documents. Though, the provision of the land settlement mauza headman are the responsible people to verify the land ownership in the respective mauza and then send the land report to the land office in the Upazila or sub-district. Hence, without reports from the headman, the military settled the Bengali by giving them the above mentioned land documents. Therefore, dual ownership of the land has created this context. Though, the Bangladesh government had changed the regulation of article 34 to open up the Bengali settlement, but they did not change the legal authority of land or the legal ownership process of land. In this context, the military is here unduly interfering with the civil administration’s domain of authority.

The past and still ongoing conflict between the state authorities and the jhumia has many aspects, only some of which I have been able to address satisfactorily here. A considerable amount of land is classified as so-called untitled land (“khas land”) in the absence of ownership. The existence of vast amounts of khas land has been used strategically by successive government, as a main reason why they can and should actively encourage new Bengali settlement on khas land in the CHT. The most of this land was since the pre-British period managed and used by the ethnic groups in the CHT. The rigid and inappropriate legal perceptions of land ownership in the CHT, forms the government’s point of view, so to say, all matters related to rights and actual use by the

158

hill people of the CHT, and in particular the rights and practices of the vast number of households still practicing jhum or who used to, but have been unjustly dislocated from their native lands.

Thus, rehabilitation of current jhumia people continues to be accorded a low priority compared to providing user rights and land rights to older and newer Bengali settlers. Again, returning to my own investigations in the five communities, the number of households who are landless is very high. In fact 210 out of 267 households are landless; this amounts to about 78 percent. My investigation in the form of interviews and focus-group discussions reveals that these landless households survive with the lack of economic security. They are mostly dependent on being daily labourers to the Jhumia or Bengali land owners and the collection of the fuel wood, bamboo, wood and others forest resources to sell in the market. However, at present, resources have been escalating due to privatization of land and the introduction of teak and fruit plantations on the private land. The impact of privatization of land will be discussed below.

5.3.2. Land privatization and its impact on jhum cultivation

Due to the privatization process of land in the hills, a new pressure was created on jhum cultivation. The land privatization process has many forms. In one of my studied Para, I found that land is being privatized by the government, but also by non-government institutions. In one instance, it was competing between a social or religious trust, with both Bengali and Jhumia members having registered former communal land as private property. The government remains, nevertheless, the major appropriator of former native lands. In the Para where I had selected the jhumia rehabilitation para has told me that more than 2,400 acres of land have been acquired by the Forest Department under the forestry programme. Another 1600 acres of land had been acquired by Bengalis and jhumia from the Khagrachari district town under the names of organizations and individuals as well as by the government and by non-government organizations. Bengali settlers also had settled on the same mauza in the studied para during the 1980s—around 1,200 households. Therefore, privatization is occurring on a large amount of communal forested lands, previously used for jhum cultivation.

Hence, the future difficult prospect for jhum cultivation was highlighted to me by one of the mauza headman I interviewed. He said that ‘there will be no more land in this mauza to practice jhum cultivation within next ten years, due to privation of land and permanent cultivation such as fruits and timber gardening.’ He also analyzed legal factors, which seriously reduced cultivable land for jhum by this remark:

‘Only one in five acres of land for settlement is on hill land. However, there is no restriction or limit for the purchasing (private) of land. Anyone can buy land according to their efforts on the basis of financial solvency. In this context, Bengali are more solvencies than local indigenous peoples. Land has been decreasing as a result of Bengali settlements, introduction of Purnabason Prokolpo like above mentioned jhumia rehabilitation programme, plantation programmes and individual and group-based privatization of land etc.’ (citation footnote)

5.3.3. The influences of religion and ethno-nationalism on land issues

Jhumia as an ethno-nationalistic political movement has evolved since the leadership of independent Bangladesh rejected recognizing the hill leadership’s claim for limited self-rule and constitutional recognition. Each ethnic group in the CHT still has to some degree distinct languages, cultures, and religions. However, on the post-independent situation with curbed political and civil rights, overt discrimination and state interference have created a new and profound sense of unity across these ethnical borders. Jhumia peoples, as a political and ideological concept, have been an effective basis for political mobilization, headed by PCJSS. The ethnic minority-majority situation in the CHT pits Jhumia as native insiders versus Bengalis as outsiders and occupants. The large-scale rehabilitation of Bengali settlers and the neglect of the Jhumia’s land rights and overall livelihood situation have just reinforced this conflict as a minority-majority situation. On the other hand, the Land Commission has not been enforcing the laws, as I had mentioned at the beginning in this chapter. Hence, in this context, the land settlement process has been prohibited since 1998, until the Land Commission was functioning.

However, the declared prohibition of new land settlement did not address occupation for educational and religious purposes, hence land hungry individuals, the government (including the military) and non-governmental organizations are ruthlessly utilizing this loophole in the law.

On the other hand, the ongoing situation was reported by the UN' Special Rapporteur on Freedom of Religion and Belief, Abdel Fattah Amor visited the CHT in May 2000. In his report, he stated that the CHT is 'more sensitive to the interests of Muslims' and that this is reflected in the obstacle faced by non-Muslims in terms of access to public sector jobs or the responsible posts. Furthermore, he identifies Islamic interference as a reason for the delays in full implementation of the CHT Accord. He raises concerns about the current situation of ethnic communities/indigenous peoples, and notes that their survival and the preservation of their ethnic, religious and cultural identity are under much pressure.¹⁵⁹

Religion as a political factor in deciding the history of the CHT is, as noted in previous chapters, nothing new. During the partition of British India, the CHT was merged with Muslim Pakistan, even though 95 percent of the inhabitants were non-Muslim. After Partition, the relative composition of religious faiths has changed quite dramatically. I present the changing ratios of different religious communities in the CHT below.

Table.5.6. Changing pattern of the population size based on religion

<i>Religious group</i>	<i>Year of the census</i>									
	1951		1961		1974		1981		1991	
	N	%	N	%	N	%	N	%	N	%
Buddhist	215,000	74.8	27568	71.5	33758	66.4	39432	52.4	42531	43.6
	0	4	1	9	6	7	1	6	1	5
Hindu	40,984	14.4	47644	12.3	53373	10.5	70583	9.39	87806	9.01
		7		7		1				
Muslim	18070	6.29	43322	11.7	95633	18.8	25956	34.5	42995	44.1
				7		3	8	3	4	2
Christia	3745	1.30	10160	2.64	13272	2.61	18973	2.52	22206	2.28
nn										
Others	9475	3.30	6272	1.63	8050	1.58	8247	1.10	9168	0.94

Source: Shapon Adnan, migration, land alienation and ethnic conflicts, 2004: 60

¹⁵⁹ The indigenous worlds, IWGIA,2000-2001:295

The above table shows the ratios between Muslims, Buddhists, Hindus and Christians. It shows some striking changes, reflecting the already discussed massive settlement of Bengali Muslims during successive Pakistani and Bangladesh periods. The size of the Bengali Muslim population, which was 6.29 percent in 1951, had grown to 44.12 percent in 1991. Hence, Jhumia political activists have said to me that the high-scale settlement of what the government likes to call landless Bengalis, has at the same time been an instrument in ensuring Islamization in the CHT. It remains a telling fact, that non-Muslims (mostly Hindu) Bengalis and plain indigenous peoples (Adivasi) who have a high rate of landlessness, have not been encouraged to migrate to the CHT. Hence, my subjective knowledge about these issues among the Jhumia political leaders and educated class has considered that land alienation by the Bengali Muslims is also alienation from their culture and religion.

On the other hand, increasing land insecurity due to flaws in the legal system, and the continuing land alienation is also motivating Jhumia to protect their land, using religion as a rationale by making Keyang (Buddhist temple) Mondir (Hindu temple) Girza (church) and the orphanage centers. The majority of the native CHT people have been followers of Buddhism. This is particularly the case as it comes to the two large ethnic groups Chakma and Marma. Hence, religion has become a divisive issue among the Jhumia. In one of my studied Tripura villages, Chakma and Marma people have built a Buddhist temple with the support of local and regional institutions, including: the District Council, Regional Council, Chittagong Hill Tracts Development Board and the Ministry of the Chittagong Hill Tracts Affairs. At the beginning, the Buddhist temple was built inside the Tripura village on a piece of land (five acres). Later the property has extended into thirty acres. Thus, the temple property now includes the former jhum fields of local Tripura. They are prohibited from practicing shifting cultivation there.

Tripura, on the other hand, are mostly followers of shamanistic religions, which have also incorporated certain elements of Hindu beliefs because of close contact with Hinduism over hundreds of years. Tripura are also converting into Christianity, as a result of missionary activities. In the Bandarban district, the south part of the CHT Tripura, they have been converted more than a hundred years ago since the British Colonial period. In the Khagrachari district, Christian missionaries have been intruding since the late 1980s.

The main causes of the conversion into Christianity were for reasons of social and economic security. However, the implications of the causes of the conversions into Christianity need to be researched. There were also significant numbers of Chakma people who also had converted into Christianity.

5.4. Has the state sponsored Bengali settlement and land grabbing stopped?

The major provisions in the Peace Accord regarding disputes and management of land has not as yet been implemented. The Bangladesh Army is planning to settle 10,000 Bengali families in the Kassalong Reserved Forest in the Northern part of the CHT close to the Mizoram state by the India border. On the other hand, among more than 500 Military camps in the CHT, there have been only 35 camps which have been dismantled. There are explicit provisions in the Accord to withdraw all of the temporary camps of military personnel, Ansar and Village Defence Force, except the Border Security Force (BDR) and six permanent cantonments.¹⁶⁰ While the authorities have problems in finding appropriate land for the camps, as much as 30,000 acres of land has been taken on lease for an artillery training camp in the Bandarban District in CHT. As a result of this planned expropriation, 25,000 Jhumia have been displaced. In this case, the Bangladesh military has also been acquiring lands of indigenous peoples in the name of expansion of camps, establishment of a training centre, etc.

Not only that, one of the informants, a Jhumia political activist, told me that from the year 2001, the government has imposed de facto military rule through their Operation Uttoron or Operation Upliftment on the post-accord in CHT to continue the military presence. As the military is the factor in Bangladesh politics. Bangladesh was run by the military for a fifteen year long period from 1975 to 1990. Therefore, elected governments also tried to maintain negotiations with the military. The issues of the CHT, they were considered the geo-strategic area in the state policy. Military has been continuing its operations in the CHT, interfering with civil administration, providing support to Bengali

¹⁶⁰ The indigenous worlds, IWGIA,2003:303

settlers, controlling forest administration, road maintenance and construction, and maintaining law and order etc.¹⁶¹

5.5. Ownership of land in the CHT and nationally

As already noted in this chapter, the Hill District Councils and the Land Commission have not been entrusted with the necessary mandate and resources to become functioning bodies for managing land disputes. The administrative impasse, as I discussed above, is a very noteworthy feature of the difficulties of implementing the Accord in CHT. If I briefly compare my own data on land ownership patterns (among hill dwellers) with national data, the rate of landlessness is higher among the communities I studied than in the plain land. I do, of course, recognize that my own data here is selective and can not be generalized. Even so, it might be indicative to some extent. The absence of land documents (in paper) among jhum cultivators makes them become classified as landless. That is, there are 78 percent Jhumia people who are landless in the households I conducted research. However, in my research I included them in a land owner category for those who had been controlling the land or using it.

However, the actual level of landlessness—if one includes both de facto lack of control over land for jhum cultivation and for permanent cultivation—has yet to be documented in the CHT. In 2001, about 69 percent were landless on the national level. If my own limited data is indicative, the ratio in the CHT might be higher. The dramatic increase in the proportion of landless people since the Partition of British India is shown below:

Table 5.7.: Land less rate in Bangladesh since 1947 to 2001

Year	Landless population (in percent)
1947	14.30
1970	19.80
1975	32
1984	46
2001	68.8

Source: Mahbuba Nasreen et al, 2006:4

¹⁶¹

Land and population ratio in CHT

The total area of unclassified land in the CHT was measured by the Canadian Forestall Survey in the 1960s. The Survey shows that the total amount of unclassified land was 2,359,913 acres, excluding 132,270 acres of the settlement and water bodies areas (633 and 131,637 acres). The total population living on unclassified land was 1,342,740. Hence, the average per head land has stood at 1.75 acres. These numbers on unclassified lands are, of course, much less than the amounts which existed in the early Pakistan period. The survey was able to document the areas taken for major government-sponsored schemes. The Kaptai Hydroelectric Dam, numerous Bengali settlements, many extensions of reserve forest, the plantation programme and forestry programmes, military camps and training centers, extension of the market etc., represent a vast portion of this land category. On the post-partition of British India, the total land that has been occupied by the different agencies is shown below.

Table- 5.8.: Large scale land occupation by the selected agencies

Serial no.	Actors or activities	Amount of land (in acres)
1.	Extension of reserve forest	217,790
2.	Social forestry programme	4,940
3.	Forestation programme	273,182
4.	Military camp and training	156,522
5.	Kaptai Damp	161,785 (including 54,000 valley land)
6.	Bengali settlement ¹⁶²	500,000
7.	Rubber plantation	15,325
Total		13,29,544 (acres)

It has been found that there were 1,329,544 acres of land that has been occupied from the unclassified land. On the other hand, the total unclassified land I had shown in the previous chapter on table 4.2, the total unclassified lands were 2,359,913. Hence, the remaining unclassified land in the CHT was (2,359,913 -1,329,544) is 1,030,369 acres. It has found that there are more than 56 lands listed as unclassified land which has been occupied by the above mentioned actors or activities. Therefore the population per head

¹⁶² Total Bengali settlement was around 5, 00000 during Pakistan and Bangladesh period.

of land has stood at .77 acres. On the other hand, as I mentioned in the previous chapter, the population density on the cultivated land was 1600 per square kilometer in 1967. In the last four decades, the population density on the cultivable land naturally has increased due to the escalation of cultivable land and the increases of population internally and externally. However, the actual population density has not been conducted in the last four decades. Hence, lack of statistical data on the CHT, particularly on cultivable land (hilly and valley) total jhum cultivator household, population density etc. has not been properly known. Thus due to disaggregate data and the state policy on land based on the myth of the land available, land or vacant land is the cause of the increases of the landless Jhumia people in the CHT. Now I will discuss the challenges to the jhum cultivation.

5.6. Challenges to current land ownership system and jhum cultivation

The American geographer David E. Sopher has analyzed jhum in the CHT in relation to the introduction of a state system by the British. He stresses that jhum was ranked low by the colonial State, granted the requirements of the entire state economy. The politicians have assumed the inefficiency of the jhum production system, rather than plough cultivation, and other economic production systems. The challenges of the jhum cultivation, he also mentioned, was that the domination or control of the Jhumia life by the state authority is the main reason, rather than the question of the amount of suitable jhum land.¹⁶³

Since the British period, jhum cultivation has been discouraged due to its assumed low profitability in relation to taxes and other commercial concerns. The introduction of a forest policy based on Reserved Forest, was (as I have debated earlier) the main source of income for the British. The British, therefore, did not give formal ownership rights to the jhum cultivators. In order to discourage jhum cultivation further, they promoted plough cultivation in the lower-lying fertile vallies. Sopher argues that ‘the partial fiction of “free” swidden land is no longer maintained and the swidden cultivator becomes a short-term tenant farmer due to introduction of complex peasant society and the growth of individualism for the causes of heavily and circumscribed by state regulation.’¹⁶⁴

¹⁶³ Sopher, David E, 1964:125-126

¹⁶⁴ Sopher, David E, 1964:125

In the Post-Accord period in the CHT, land management and use have partially become recognized by the state under the Unclassified State Forest Area under the Hill District Council Act, which I had mentioned at the beginning of this chapter. However, the rights of use and control have not been given as of yet. Furthermore, as I have shown, land has increasingly been occupied by the state and state agencies even in the Post -Accord Period (see table 5.5). I can agree with David E. Sopher when he says that the future challenges of jhum depend on the exercise of political power and the utilization of resources.

Because of the many changes in political power since the last century, the lands and forests of CHT have been used by the state and state agencies continuously. A complex set of political, institutional, social and cultural factors, which I hope I have been able to document to some degree in this thesis, have impacted jhum cultivation in unprecedented ways. Overall, the significance of jhum, as it comes to overall importance in the CHT-economy and in terms of the people involved, has drastically been reduced. As I mentioned earlier, in the beginning of the last century (in 1901) the total jhum cultivators were 109,360 out of a population of 124,762. About a hundred years later, the overall population has increased to 1,342,740 i.e. eleven times more than 100 years earlier. On the other hand, the amount of total land has decreased by 56 percent, which was shown on table 5.5. Hence, land pressure has increased manifold (about 28 times) in this period. This dramatic increase must be born in mind when we know that the jhum dependent household has only doubled in this period and the jhum cycle has been reduced.

Hence, jhum cultivation continues on less than half of the land (compared to a century earlier) by twice as many cultivators, but with a jhum cycle just 1/4 of what it used to be. The present jhum cycle is only about 3-4 years, compared to 12-13 years before. I consider this drastic reduction of the jhum cycle (over one century) as having very serious impacts on the jhumias livelihoods. There is, unfortunately, very little systematic research on the historical and current consequences of this reduction. Because of the volatile situation under which I conducted my fieldwork, I could not collect intensive data to these crucial changes in the production cycle.

But one may assume that there has been and is a series of impacts on the economic life of the hill farmers as the productivity of land declines, and they find themselves in a

downward spiral where income declines. Subsistence becomes more difficult, and they become poorer. Poverty is very likely about to lock many of the CHT jhum cultivators and plough farmers into a production pattern focused on satisfying their most immediate needs, with little opportunity to pursue alternative production modes and longer time horizons.

There are, however, some relevant studies that have been conducted on tropical shifting cultivation in other regions. In a study conducted in Madagascar, Andrew Keck and his colleagues have discussed that the intensive use of land and shorter fallow periods create high incidence of topsoil erosion and soil nutrient depletion. Eventually, it reaches a point where soils and vegetation fail to regenerate sufficiently, leading to consequent declines in land productivity, unless a technology based on fertilizers can be adopted.¹⁶⁵ The impact of the decrease of the jhum cycle (shown in this study), highlights the impact on land management. When the population increases and economic decline continues, the rules and systems of land use and land rights in traditional farming communities tend to disintegrate and eventually to disappear. Then a new property rights system is evolving, while irreversible damages to the natural resource base may occur.¹⁶⁶ The anthropologist Harold C. Conklin has debated the process of undermining agricultural systems, in the interplay between the significant relations of time, space, technique and local ecology.¹⁶⁷ In the current changing political situation in the CHT, how far jhum cultivation will continue to have a future depends on the political empowerment of the people of the CHT, including the jhumias. This will have profound implications for policy development and rights to land and forest resources in the troubled hill region of the CHT.

¹⁶⁵ Keck, Andrew et al,1994:5

¹⁶⁶ Ibid, 1994:5

¹⁶⁷ Conklin, Harold C.1957:1

5.7. Chapter Summary

Jhum cultivation has significant relations with land management in the post –accord political and legal process in the CHT. Therefore, the practices of jhum cultivation are dependent on the rights of land and resources which are ensured by the state. Thus, how much space was given within the political and legal process to the Jhumia as well as the level of empowerment are also conditional factors in the land management issues. At the same time, in the space of the political and legal process, distinctiveness and addressing these factors like ethnicity and religion I have also analyzed in terms of the local institutional process. Thus, ethnic representatives in land management in the empowerment process are essential to addressing equal rights and sharing control of the land and forest. Hence, Jhumia land rights management issues needed to address the diversity of ethnicity and distinctiveness as well as historical dimensions and state structural policy. I will conclude my final chapter with the analysis of legal and policy implications for the resource rights of the Jhumia.

CHAPTER SIX: CONCLUSION

In this study, I have attempted to analyze the historical and contemporary context for land and forest policies and legislation, and in particular how they have affected the people of the CHT since the British colonial period until today in Bangladesh. In this endeavor, I attempted to make use of a multidisciplinary approach, building on insights from especially history, law, anthropology and political science in order to get a grasp of the nature of the early relations between the colonial state and the erstwhile native chiefdoms in the CHT, (including the context for the highly consequential 1900 Act), and the nature of the relations between successive post-colonial regimes and the ethnically diverse people of the CHT and their political movements.

A state system was introduced in the CHT in the 1860s by the British. The British quite rapidly expanded their administration into the CHT for political, military and economic purposes, which I have analyzed in this thesis. The CHT became a separate district, and military enforcements were made in order to make the new district a buffer against the “aggressive” Kukis¹⁶⁸, whom the British feared due to earlier deadly clashes. A radical distinction was made between plough cultivation, considered to be the cultivation of civilization and economically profitable; and the primitive and hence environmentally destructive jhum cultivation. These entrenched but faulty notions came to underpin colonial land use and taxation policy and also the British land legislation. Through these political and administrative arrangements, the CHT gained a certain geo-political importance as a hinter land of the British Empire in the Indian subcontinent. A chief administrator, a District Commissioner of the District was appointed by the British. Within eight years after the British had arrived in 1868, the British imposed the doctrine of “terra nullius” and claimed ownership of all the diverse hill and valley lands of the CHT.

However, the people from the CHT have been living based on their own social and economic system, such as clan chiefs and jhum cultivation. The people’s practices of land entitlement and the territorial concept differed from the notions of the British practices around land and territory. Though at the beginning, the British administrators were

¹⁶⁸ I discussed earlier about the Kuki.

opposed by the local chiefs for a decade. Hence, due to the contested situation with the native tribal leaders, the British had integrated the native tribal leaders in 1881 by dividing the CHT into three circles under the colonial administration. The role of the circle chief was to collect the jhum tax from the Jhumia on their respective circle. On the other hand, the Deputy Commissioner held the civil, criminal and jurisdiction matters overall in the CHT.

Before the establishment of the circle chief, the British had imposed the reserve forest in 1880 on the 1,356 square miles out of 5,146 square miles on the more than 25 percent of the total land in the CHT. For this reason and for the first time the area for jhum cultivation was restricted by one-third of the area in the CHT. The main purposes of the declaration of the reserve forest were for the interest of the revenue. To further increase the revenue, the British patronized plough cultivation and gave the land ownership rights to valley land. Hence, to promote the plough cultivation, valley land was given to the plough cultivators without imposing any tax under the provision of article 34(1) of the CHT Regulation of 1900 Act. Though, only three percent in the CHT covered valley land.

Later on, in the post-British period and since the Pakistani period, land and forest policy was turned into a more intensive commercial interest. Hence, in the name of commercial expansion, the Pakistan government had introduced the Kaptai hydroelectric project financed by USAID in the 1960s. Due to the submerging of 40 percent of the valley land, a total of 18,000 Jhumia households were displaced. The misconception of the Jhumia people was in identifying them as having a nomadic lifestyle, which has led to the Bureaucratic and aid workers to not properly rehabilitate jhum cultivating households. Furthermore, the 93,000 Bengali had settled there in 1960. Pakistan initiated Bengali settlement policy which has continued into the Bangladesh period since the 1980s. Hence, the demographic figure in the CHT was dramatically changed within one decade. Therefore, it has created pressure on the Unclassified State Forest both in valley and hilly land.

Jhumia people consist of twelve distinct ethnic groups. I have shown the two distinct policies between the British and post-British periods. During the British period, on the distribution of the Circle Chief and Mauza chief there was reflected an ethnic strategy by

the British people. Hence, in the northern CHT, however, the Tripura people were the dominant group in number and they were not appointed as the circle chief. Therefore, Tripura people were excluded on the local management process with the British administration. Hence, the British gave the preferences within the Jhumia peoples land management and restricted the non-Jhumia people in the CHT.

In the post-British period in Pakistan and Bangladesh, land management policy was transformed distinctively. Due to direct interference on the Jhumia, usufruct rights to land were impacted by the Bengali settlement. Displacement of the Jhumia people and the Bengali settlement were the issues that the ethnic movement took to the front line on the land rights issues. The boundary was created between the Bengali and the Jhumia people. However, among the Jhumia people there was diversity in relation to ethnicity, languages, religion etc. but those categories become hidden issues due to the influences of the State patronization of the Bengali.

My analysis of the history of the land use and ownership process has found that Jhumia peoples had usufruct rights on the Unclassified State Forest land under the British. These rights were not recognized during the Pakistan and Bangladesh period. Hence, by not recognizing the usufruct rights and at the same time encouraging Bengali settlement in the CHT, the State has played a dual role in it. Based on use and ownership rights on usufruct land, Jhumia people have the priority rather than the Bengalis as they have been living there since time immemorial the British colonial period.

I have discussed the legal ground of the CHT Regulation of 1900 and the circumstances under which this law was formed and its wider implications for the Jhumia people. It was found that state policy on land and forests were the prime targets for rapid economic outcome from those sectors. In this context, Jhum cultivation has not contributed any significant interest in the favor of state. Thus, the main reason for discouraging jhum cultivation was in order to use the jhum land for others commercial interests, such as to increase the area of the reserve forest land and to introduce the commercial plantation programme. It was shown that through the state policy on land issues it has been the state who has been playing the central role in land use, ownership, and the management process in the CHT. The State has patronized the plough cultivation instead of jhum cultivation.

Hence in the analysis of the State land and forest policy, it was found that the Jhumia indigenous peoples have been facing challenges due to state interferences on their land. Population transfer programmes and the privatization and commercial utilization of the land have rapidly impacted the Jhumia people's own land use and ownership system. Hence, Jhumia indigenous peoples have been dislocated and they are facing massive human rights violations due to these causes, which are still visible in the postaccord period in the CHT. Land scarcity and Bengali settlement are the main causes for Jhumia land alienation. Hence, population increases internally and externally and its creation of pressure on the land needs to be considered in order to understand the existing ethnic conflict in the CHT. However, in the accord it was recognized that to solve the land problem under the provision of Land Commission.

Through this research I have found that the State has not considered verifying the amount of cultivable land taken during the Bengali settlement process. Due to the human settlement on the valley land, it was found that there is no vacant land in practical terms in the CHT. On the contrary, the category of the "Khas land"—government owned land—has also been decreasing due to the extension of multipurpose programmes, such as reserve forest areas and for the purposes of commercial plantations and allotment to Bengali settlers. Land for the military and other government purposes has also decreased the land in the CHT. Thus, the above analysis highlights the main reasons for the dislocation and dispossession of the Jhumia people and the violation of their human rights.

The overall analysis of the historical process and the role of the State in it have found that Jhumia people have—on historical grounds in relation to the land and economic practices—the claim for their rights within the category of indigenous peoples. Hence, the rights of the Jhumia people's movement has relevancy on local, legal, and historical grounds, and it has a connection with international legal instruments.

Analysis of the CHT Regulation of 1900 Act has some provisions that are vested in some rights to the Jhumia people and their representatives, such as the circle chief and headman under article 34. However, for perusing state interests, that provision has been changed many times in the question of Bengali settlement, as well as to decrease the land ceiling; though, land management provisions under the circle chief and headman were

still remaining. Thus on the question of land management, the circle chief and headman has a role in the allocation and distribution of the land. However, this provision was not followed during the Bengali settlement and other commercial plantation programme. The Jhumia people have been claiming the need to empower the headman and circle chief roles more effectively since the independence of Bangladesh. Later on, in 1989 it was recognized that the rights of land and land management roles were to be given from the Deputy Commissioner to the Hill District Councils. However, that provision has not yet been transferred. In this case it was found that the Jhumia people have the right to claim their land under the regulation of the 1900 Act and the HDC Act of 1989 on land management.

Furthermore, in the international legal instruments on Indigenous Peoples, the land claims of the Jhumia peoples are within this scope. However, the government of Bangladesh has been denying the existence of indigenous peoples in Bangladesh in the international arena. During the adoption of the UN Declaration of the Rights of Indigenous Peoples, Bangladesh has taken the role of abstaining with thirteen other respective countries. Bangladesh also has not ratified the ILO Convention No. 169. However she has ratified the ILO Convention No. 107 in 1972. Bangladesh has ratified others international legal instrument as well, such as the International Convention on the Elimination of Racial Discrimination (ICERD) in 1979.

Hence, the present deployment of the military in the CHT, the ongoing Bengali settlement, patronization rations (food grains and other financial support and given land), and land grabbing by the Bengali settlers and military have demonstrated racial discrimination by the current state of Bangladesh. In this context, the State has violated ICERD rules and regulations since 1979. In Article 1(1) of ICERD it defines the term “racial discrimination” as:

‘...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other of public life’¹⁶⁹.

¹⁶⁹ International conventions of the elimination of all forms of racial discrimination
<http://www2.ohchr.org/english/law/cerd.htm>

These provisions are applicable in the case of the Jhumia indigenous peoples. Bangladesh has ratified ICERD on the 11th of June in 1979 as I mentioned earlier and it was entered into force on the 11th of July 1979. On the contrary, at the same time, the Bangladesh government began the Bengali settlement in the CHT. The case of military deployment and consultation with indigenous representatives was recognized on the UN Declaration of the Rights of Indigenous Peoples. Furthermore, implementation of local treaties was also mentioned in the Declaration. That is, on the issues of military deployment, the Declaration states in Article 30(1) that:

‘...military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. In the case of the land acquisition of the indigenous peoples land further mentioned on the article 30(2), states shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior using their lands or territories for military activities.’¹⁷⁰

The other relevant article in relation to the CHT Accord was found in article 37 which states: ‘Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements concluded with States or their successors and to have States honour respect such treaties, agreements and other constructive arrangements.’¹⁷¹ Hence, in the current struggle for the land rights of the Jhumia people, it was found that the claim to land use and ownership rights in terms of historical and legal validity and in terms of the local context is in fact recognized in the international legal instruments on indigenous peoples. In this case, the State has the responsibility and obligation on the international legal according to these instruments to implement the rights of indigenous people’s on the national level. Therefore, Jhumia people’s rights to land use and ownership depend on the implementation of these legal instruments and a mutual relationship and respect between the State and the Jhumia people.

¹⁷⁰ United Nations Declaration on the Rights of Indigenous Peoples.
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹⁷¹ Ibid

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Zamindari system were employed by the Mughals to collect taxes from peasants, see
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APPENDIX

1. The Chittagong Hill Tracts Peace Accord of 1997

Under the framework of the Constitution of Bangladesh and keeping full and firm confidence in the sovereignty and integrity of Bangladesh, to uphold the political, social, cultural, educational and economic rights of all the people of Chittagong Hill Tracts region and to expedite socio-economic development process and to preserve and respect the rights of all the citizens of Bangladesh and their development, the National Committee on Chittagong Hill Tracts, on behalf of the government of the People's Republic of Bangladesh, and Parbatya Chattagram Jana Sanghati Samity, on behalf of the inhabitants of Chittagong Hill Tracts, have reached the following agreement in four parts (A, B, C, D):

A) (Ka) GENERAL

1. Both the sides have recognised the need for protecting the characteristics and attaining overall development of the region considering Chittagong Hill Tracts as a tribal inhabited region.
2. Both the parties have decided to formulate, change, amend and incorporate concerned acts, rules and regulations as soon as possible according to the consensus and responsibility expressed in different sections of the agreement.
3. An Implementation Committee shall be formed to monitor the implementation process of the agreement with the following members:
 - a) A member nominated by the Prime Minister: Convenor
 - b) Chairman of the Task Force formed under the purview of the agreement: Member
 - c) President of Parbatya Chattagram Jana Sanghati Samiti: Member
4. The agreement shall come into effect from the date of the signing and execution by both the sides. This agreement shall remain valid from the date of its effect until all the steps are executed as per the agreement.

B) (Kha) CHITTAGONG HILL TRACTS LOCAL GOVERNMENT COUNCIL/ HILL DISTRICT COUNCIL

Both sides have reached agreement with regard to changing, amending, incorporating and omitting the Hill District Local Government Council Acts 1989 (Rangamati Hill District Local Government Council Act 1989, Bandarban Hill District Local Government Council Act 1989, Khagrachhari Hill District Local Government Council Act 1989) and its different sections which were in existence before this agreement came into being, as below:

1. The word “tribal” used in different sections of the Council Acts shall stay.
2. The name “Hill District Local Government Council” shall be amended and the name of council shall be “Hill District Council.”
3. “Non-tribal permanent residents” shall mean a person who is not a tribal but has legal land in the hill district and generally lives in the hill district at a specific address.
4. a) There shall be 3 (three) seats for women in each of the Hill District Councils. One third (1/3) of these seats shall be for non-tribals.
b) Sub-sections 1,2,3 and 4 of section 4 shall remain in force as per the original act.
c) The words “deputy commissioner” and “deputy commissioner’s” in the second line of sub-section (5) of section 5 shall be replaced by “circle chief” and “circle chief’s”.
d) Following sub-section shall be added in section 4:
Whether a person is a non-tribal shall be determined, along with the identity of non-tribal community to which he belongs, by the concerned Circle Chief on the provision of submission of certificate from concerned Headman/Pourasabha chairman/Union Parishad chairman and no person can be a candidate for the office of the non-tribal member without a certificate from the concerned Circle Chief in this regard.
5. It is narrated in section 7 that a person elected chairman or member shall make an oath or announcement before the Divisional Commissioner of Chittagong. By amendment of it there shall be incorporated that the members shall make oath or announcement before “ a Justice of High Court Division” instead of “Divisional Commissioner of Chittagong”.
6. The words “to Divisional Commissioner of Chittagong” will be replaced by “as per election rules” in the fourth line of section 8.
7. The words “three years” shall be replaced by “five years” in the second line of section 10.
8. There shall be a provision in section 14 that if the office of the Chairman falls vacant or in absence of the Chairman, a tribal member elected by other members of the Council shall preside and perform other responsibilities.
9. The existing section 17 shall be replaced with the sentences as mentioned below:
A person shall, under the law, be eligible to be enrolled in the electoral roll, if
 - (1) he is a citizen of Bangladesh;
 - (2) he age is not less than 18 years;
 - (3) he is not declared mentally unsound by any competent court;
 - (4) he is a permanent resident of Hill District.

10. The words “determination of electoral constituency” shall be added in the sub-section (2) of section 20.

11. There shall be a provision in sub-section (2) of section 25 stating that the chairman and in his absence a tribal member elected by other members shall preside over all the meetings of the council.

12. As the entire region of Khagrachhari district is not included in the Maung circle, the words “Khagrachhari Maung Chief” in section number 26 of Khagrachhari Hill District Council Act shall be replaced by the words “Maung Circle Chief and Chakma Circle Chief.” Similarly, there shall be scope for the presence of Bomang Chief in the meeting of Rangamati Hill District Council. In the same way, there shall be provision that the Bomang Circle Chief can attend the meetings of Bandarban Hill District Council meetings if he wishes or is invited to join.

13. In sub-section (1) and sub-section (2) of section 31 there shall be a provision that a chief executive officer equivalent to the status of a deputy secretary shall be the secretary in the Council and there shall be provision that the tribal officials would be given priority for this post.

14. a) There shall be a provision in sub-section (1) of section 32 that for the proper conduct of its affairs the Council may, with the approval of the government, create posts of various categories of officers and employees.

b) Sub-section (2) of section 32 shall, by amendment, be made as follows:
The Council can, in accordance with regulations, appoint class three and class four employees, and can transfer, suspend, dismiss, remove or can impose any other punitive action on them. But provided that the priority of the tribal inhabitants must be maintained in case of the said appointments.

c) There shall be provision in the sub-section (3) of section 32 stating that:
The government can, in consultation with the Council, appoint other officers as per regulation and can transfer, suspend, dismiss, remove or can impose any other punitive action on them.

15. In sub-section (3) of section 33 “as per regulation” shall be mentioned.

16. The words “or any other way determined by the government” placed in the third line sub-section (1) of section 36 shall be omitted.

17. a) The original law shall be in force in the fourth paragraph of sub-section (1) of section 37.

b) “As per rules” will be included in Sub-section (2), sub-sub-section (d), of section 37.

18. Sub-section (3) of section 38 shall be repealed and by amendment, the sub-section (4) shall be framed as follows:

At any time before the expiry of the financial year, if deemed necessary, budget may be formulated and sanctioned.

19. In section 42 the following sub-section shall be added:

The Council with the fund received from the government shall formulate, initiate and implement development projects on the subjects transferred and all the development works initiated at the national level shall be implemented by the concerned ministry/department through the Council.

20. The word “government” placed in the second line of sub-section (2) of section 45 shall be replaced with the word “Council”

21. By repealing the sections 50, 51 and 52, the following section shall be made:

The government, if deemed necessary, may advise or order the Council, in order to ensure conformity with the purpose of this Act. If the government is satisfied with definite proof that anything done or intended to be done by the Council, or on behalf of the Council, is not in conformity with law, or contrary to public interest, the government may seek information and clarification and give advice or instruction to the Council on the concerned matters in writing.

22. In sub-section (3) of section 53, the words “if the period of super session is completed” shall be repealed and “within ninety days of super session” shall be incorporated before the words “this Act”.

23. The words “of the government” in the third and fourth lines of section 61 shall be replaced with the words “of the ministry”

24. a) By amendment, sub-section (1) of section 62 shall be made as follows:

Notwithstanding anything contained in any Act for the time being in force, all members of the rank of Sub-Inspector and below of Hill District Police shall be appointed by the Council in manner laid down by regulations, and the Council may transfer and take disciplinary action against them as per procedure laid down by regulations; provided that in the manner of such appointment tribals shall be given priority.

b) The words “subject to the provision of all other laws for the time being in force” placed in the second line of sub-section (3) of section 62 shall be repealed and substituted by the words “as per rules and regulation”.

25. The words “providing assistance” will remain in third line in section 63.

26. Section 64 shall be amended as follows:

a) Notwithstanding anything contained in any law for the time being in force, no land, including those land suitable for giving settlement, within the boundaries of Hill District

shall be given in settlement including giving lease, purchased, sold and transferred without prior approval of the Council; provided that this provision shall not be applicable in case of areas within the reserved forests, Kaptai Hydroelectricity Project, Bethunia Earth Satellite Station, State-owned industries and factories and lands recorded in the name of government.

b) Notwithstanding anything contained in any law for the being in force, no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council.

c) The council can supervise and control functions of Headman, Chainman, Amin, Surveyor, Kanungo and Assistant Commissioner (land).

d) Fringe land in Kaptai Lake shall be given settlement on priority basis to original owners.

27. Section 65 shall be amended as follows:

Notwithstanding anything contained in any other law of for the time being in force, responsibility of collecting land development tax shall be entrusted in the Council and the said tax collected in the District shall remain in the account of the Council.

28. By amendment of section 67 it shall be made as follows:

If deemed necessary for coordination of activities between the Council and government authorities, government or the Council shall put specific proposal on certain matter(s) and functions may be coordinated by mutual correspondence between the Council and the government.

29. By amendment of sub-section (1) it shall be made as follows:

The government in consultation with the Council can, by notification in the official gazette, make rules for carrying out the purposes of this Act and even after the rules had been made, the Council shall have special right to file petition for reconsideration of the rules.

30. a) In the first and second paragraphs of sub-section (1) of Section 69, the words “prior approval of the government” shall be omitted and the following part shall be added after the words “can do” in the third Para:

“Provided that if the government differs with any part of the regulation made by the Hill District Council then the government can give advice or instruction for amendment of the said regulation”.

b) The words “transfer of power of Chairman to any officer” mentioned in the (h) of sub-section (2) of section 69 shall be omitted.

31. Section 70 shall be omitted.

32. Section 79 shall be amended as follows:

If in the opinion of the Council any law applicable to Hill District, passed by the national parliament or any other authority, is found to be hurtful to the district or objectionable to the tribal people, the Council may file petition in writing, for the purpose of amendment or relaxation of its application, to the government stating the reasons for which the law is being hurtful or objectionable and the government shall in the light of the petition, adopt necessary remedial measures.

33. a) The word “supervision” shall be added after the word “order” in the No. 1 of the functions of the Council in the First Schedule.

b) The following subjects shall be added in the No. 3 of the functions of the Council:
Vocational training;
Primary education in mother tongue;
Secondary education.

c) The words “or reserved” placed in sub-section 6(b) of the function of the Council in the First Schedule shall be omitted.

34. The following subjects shall be added in the functions and responsibilities of the Hill District Council:

- a) Land and land management
- b) Police (local)
- c) Tribal law and social justice
- d) Youth Welfare
- e) Environment preservation and development
- f) Local tourism
- g) Improvement trust and other local government institutions except Poursabha and Union Councils
- h) Licensing for local trade and business
- i) Proper utilization of water resources of rivulets, canals, ponds and irrigation except Kaptai lake
- j) Preservation of death and birth and other statistics
- k) Money lending and trade
- l) Jhum Cultivation.

35. The following sectors and sources shall be included in the taxes, rates, tolls and fees to be imposed by the Council as stated in the second schedule:

- a) Registration fee from non-mechanical transports
- b) Tax on sale and purchase of goods
- c) Holding tax from land and buildings
- d) Tax on sale of domestic animals
- e) Fees from cases of social justice
- f) Holding tax on government and non-government industries
- g) Part of royalty from forest resources

- h) Supplementary tax from cinema, theatre and circus, etc.
- i) Part of royalty from license or lease given by the government for exploration and extraction of mineral resources
- j) Tax from business
- k) Tax from lottery
- l) Tax from fishing

C) (Ga) THE CHITTAGONG HILL TRACTS REGIONAL COUNCIL

1. A Regional Council shall be formed in coordination with the 3 Hill District Local Government Councils provided that various sections of the Hill District Local Government Council Act 1989 (Act No. 19,20 and 21 of 1989) shall be amended with an aim to make the three Hill District Local Government Councils more powerful and effective.
2. Chairman of this Council shall be elected indirectly by the elected members of the Hill District Councils, his status shall be equivalent to that of a State Minister and he must be a tribal.
3. The Council shall be formed with 22(twenty-two) members including the Chairman. Two-thirds of the members shall be elected from among the tribals. The Council shall determine its procedure of functioning.

Composition of the Council shall be as follows:

Chairman	1
Members Tribal	12
Members Tribal (women)	2
Members non-tribal	6
Members non-tribal(women)	1

Among the tribal members 5 persons shall be elected from the Chakma tribe, 3 persons from the Marma tribe, 2 persons from the Tripura tribe, 1 person from the Murung and Tanchangya tribes and 1 person from the Lusai, Bawm, Pankho, Khumi, Chak and Khiyang tribes

Among the non-tribal members 2 persons shall be elected from each district. Among the tribal women members 1 woman shall be elected from the Chakma tribe and 1 woman from other tribes.

4. Three seats shall be reserved for women in the Council, one-third of which will be non-tribal.
5. The members of the Council shall be elected indirectly by the elected members of the Hill District Councils. Chairman of three Hill District Councils shall be ex-officio members of the Council and they shall have voting rights.

Eligibility and non-eligibility of the members of the Council shall be similar to that of the Hill District Councils.

6. The tenure of the council shall be five years. Budget preparation and its approval, dissolution of council, formulation of council's regulation, appointment of and control over officers and employees and matters related to concerned subjects and procedures shall be similar to the subjects and procedures given in favour of and applicable for the Hill District Council.

7. A chief executive officer equivalent to the rank of a Joint Secretary of the government shall be appointed in the council and tribal candidates would be given priority in the appointment for the post.

8. a) If the office of the Chairman of the Councils falls vacant then a member from among the tribal members would be indirectly elected as Chairman by the members of Hill District Councils for an interim period.

b) If any office of a member of the Council falls vacant for any reason then that shall be filled through by-election.

9. a) The Council, including coordination of all development activities conducted under the three Hill District Councils, shall supervise and coordinate the subjects vested upon the Hill District Councils. Besides these, if any lack of coordination and inconsistency is found among the Hill District Councils in discharging their responsibilities the decision of the Regional Council shall be taken as final.

b) The Council shall supervise and coordinate local councils including the municipalities.

c) Regional Council can coordinate and supervise in the matters of general administration, law and order and development of the three Hill Districts.

d) The Council can conduct programmes related to disaster management and relief, and also coordinate the activities of the NGOs.

e) Tribal laws and social justice shall be under the jurisdiction of the Council.

f) The Council can issue license for heavy industry.

10. The Chittagong Hill Tracts Development Board shall discharge its responsibilities under general and overall supervision of the Council. In case of appointment of Chairman of the Development Board, the government shall give priority to competent tribal candidates.

11. If the Regional Council finds any rule of the 1900 CHT Regulations and other related laws, rules and ordinances as contradictory to the 1989 Hill District Council Acts, then

the government shall remove that inconsistency in law according to recommendation of and in consultation with the Regional Council.

12. Until Regional Council is constituted through direct and indirect election the government may, by constituting an interim Regional Council, entrust the responsibilities of the Council on it.

13. If the government wants to formulate any law regarding CHT, it shall do so in consultation with and according to the recommendation of the Regional Council. If there arises the necessity to amend any law that may be harmful for development of the three Hill Districts or for the welfare of the tribals, or to make any new law, the Councils may file a petition or put recommendation before the government.

14. The fund of the Council shall be created from the following sources:

- a) Fund received from the Hill District Councils' fund;
- b) Money or profits from all properties vested in and managed by the Regional Council;
- c) Grant and loan from the government or any other authority;
- d) Grant from any institution or individual;
- e) Profit accruing from investment by Regional Council;
- f) Any other moneys received by the Regional Council;
- g) Money received from such sources of incomes as the government may direct to be placed at the disposal of the Regional Council.

D) (Gha) REHABILITATION, GENERAL AMNESTY AND OTHER MATTERS

Both sides have reached the following position and agreement to take programmes for restoring normal situation in Chittagong Hill Tracts area and to this end on the matters of rehabilitation, general amnesty and others related issues and activities:

1. An agreement has been signed between the government and the refugee leaders on March 9, 1997 with an aim to take back the tribal refugees from India's Tripura State based on the 20-point Facilities Package. In accordance with the said agreement repatriation of the refugees started since March 28, 1997. This process shall continue and with this in view, the Jana Sanghati Samiti shall provide all kinds of possible cooperation. The Task Force shall, after determination, rehabilitate the internally displaced tribal people of three districts.

2. After signing and implementation of the agreement between the government and the Jana Sanghati Samiti, and after rehabilitation of the tribal refugees and internally displaced tribal people, the government, in consultation with the Regional Council to be formed as per this agreement, shall start cadastral survey in CHT as soon as possible and after finalization of land ownership of tribal people by settlement of land dispute through proper verification, shall record their land and ensure their land rights.

3. The government, to ensure the land rights of the tribal families which are landless or possess less than 2 acres of land, shall provide two acres of land to each such family, provided that lands are available in the locality. If requisite lands are not available then grove land shall be provided.

4. A commission (Land Commission) headed by a retired justice shall be formed for settling land disputes. This commission, in addition to settling disputes of lands of the rehabilitated tribal refugees, shall have full power for cancellation of ownership of those lands and hills which have been so far illegally settled and occupied. No appeal can be made against the judgement of this commission and decision of this commission shall be final. This shall also be applicable in case of fringe land.

5. This commission shall be set up with the following members:

- Retired justice;
- Circle chief (concerned);
- Chairman of Regional Council/representative;
- Divisional Commissioner/Additional Commissioner
- Hill District Council Chairman (concerned)

6. a) The term of the commission shall be three years. But its term can be extended in consultation with the Regional Council.

b) The Commission shall settle disputes according to the existing rules, customs and practices of Chittagong Hill Tracts.

7. The tribal refugees who received loans from the government but could not utilize them properly due to conflicting situation shall be exempted from repayment of loans and interests.

8. Allotment of lands for rubber plantation and other purposes: Settlement of land, of those non-tribals and non-locals who were given settlement of lands for rubber plantation and other purposes but had not undertake project within the past 10 years or had not utilized their lands properly, shall be cancelled.

9. The government shall allot additional funds on priority basis for implementation of increased number of projects in CHT. New projects formulated with an aim to make necessary infrastructures for facilitating development in the area shall be implemented on priority basis and the government shall provide funds for these purposes. The government shall, considering the state of environment in the region, encourage developing tourism for tourists from within the country and abroad.

10. Quota reservation and scholarships: Until development equals that of other regions of the country the government shall continue reservation of quota system in government services and educational institutions for the tribals. For this purpose, the government shall grant more scholarships for the tribal students in the educational institutions. The

government shall provide necessary scholarships for research works and higher education abroad.

11. The government and the elected representatives shall be active to preserve the distinctiveness of the tribal culture and heritage. The government in order to develop the tribal cultural activities at the national level shall provide necessary patronization and assistance.

12. The Jana Samhati Samiti shall submit to the government the lists of all its members including the armed ones and the arms and ammunition under its possession and control within 45 days of signing this agreement.

13. The government and the Jana Samhati Samiti shall jointly determine the date and place for depositing arms within the 45 days of signing this agreement. After determination of date and place for depositing arms by the members included in the list of the Jana Samhati Samiti the government shall ensure security for return of JSS members and their family members to normal life.

14. The government shall declare amnesty for the members who shall deposit their arms and ammunition on the scheduled date. The government shall withdraw the cases against whom cases have been lodged.

15. If anyone fails to deposit arms on the scheduled date the government shall take lawful measures against him.

16. After the return of all JSS members to normal life general amnesty shall be given to them and to the permanent residents who were involved in the activities of the Jana Sanghati Samiti.

a) In order to provide rehabilitation to all returnee JSS members a lump sum of Taka 50,000/- shall be given to each family.

b) All cases, warrants of arrest, held against any armed member or general member of the Jana Sanghati Samiti shall be withdrawn and punishment given after trial in absentia shall be exempted after surrender of arms and coming back to normal life as soon as possible. Any member of the Jana Sanghati Samiti in jail shall be released.

c) Similarly, after surrendering arms and coming back to normal life, no case can be filed or no punishment can be given to any person for merely being a member of the Jana Sanghati Samiti.

d) The loans obtained by the members of the Jana Sanghati Samity from different government banks or other agencies but could not be utilised owing to conflicting situation would be exempted with interest.

e) Those members of the PCJSS who were employed in various government jobs shall be absorbed in their respective posts and the eligible members of their family shall be given jobs as per their qualifications. In such cases, the government principles regarding relaxation of age would be followed.

f) Bank loans of soft terms shall be given to the members of the PCJSS for cottage industry and horticulture and other such self-employment generating activities.

g) Educational facilities shall be provided for the children of the Jana Sanghati Samity members and the certificates obtained from foreign board and educational institutions shall be considered as valid.

17. a) After signing of the agreement between the government and the Jana Sanghati Samiti and immediately after the return of the JSS members to normal life, all the temporary camps of military, Ansar and Village Defence Party shall be taken back to permanent installations except the border security force (BDR) and permanent cantonments (three at the three District Headquarters and Alikadam, Ruma and Dighinala) by phases and with this in view, the time limit shall be determined. In case of deterioration of the law and order situation, natural calamity and such other works the army can be deployed under the civil administration like all other parts of the country as per relevant laws and rules. In this case, the Regional Council may, according to the necessity or time, request the proper authority for the purpose of getting assistance.

b) The lands of camps and cantonments to be abandoned by military or para-military forces shall be either returned to the original owners or to the Hill District Councils.

18. The permanent residents of Chittagong Hill Tracts with priority to the tribals shall be given appointment to all categories of officers and employees of all government, semi-government, councils and autonomous bodies of Chittagong Hill Tracts. In case of non-availability of eligible persons from among the permanent residents of Chittagong Hill Tracts for a particular post, the government may give appointment on lien or for a definite period to such posts.

19. A ministry on Chittagong Hill Tracts Affairs shall be established by appointing a Minister from among the tribals. An Advisory Council shall be formed to assist this ministry with the persons stated below:

- a) Minister on CHT Affairs
- b) Chairman/representative, Regional Council;
- c) Chairman/representative, Rangamati Hill District Council;
- d) Chairman/representative, Bandarban Hill District Council;
- e) Chairman/representative, Khagrachari Hill District Council;
- f) Member of Parliament, Rangamati;
- g) Member of Parliament, Bandarban;
- h) Member of Parliament, Khagrachari;
- i) Chakma Raja;
- j) Bohmang Raja;

- k) Mong Raja;
l) Three members from non-tribal permanent residents of hilly areas nominated by the government from three Hill Districts.

This agreement is framed as above in Bengali language and is done and signed in Dhaka on the date of 02 December, 1997 A.D., 18 Agrahayan 1404 Bengali year.

On behalf of the inhabitants of
Chittagong Hill Tracts

SD/-
(Jyotirindra Bodhipriya Larma)
President
Parbattya Chattagram Jana
Sanghati Samiti

On behalf of the government of the
Peoples Republic of Bangladesh

SD/-
(Abul Hasanat Abdullah)
Convenor
National Committee on Chittagong Hill Tracts Affairs,
Government of Bangladesh

THE CHITTAGONG HILL TRACTS REGULATION, 1900
(I OF 1900)



THE CHITTAGONG HILL TRACTS REGULATION , 1900 ·
(I OF 1900)

TABLE OF CONTENTS.

I.	The Chittagong Hill Tracts Regulation, 1900 (I of 1900), as amended by the Devolution Act XXXVIII of 1920, Regulation IV of 1920, Regulation IV of 1925, Government of India (Adaptation of Indian Laws) Order, 1937, Chittagong Hill Tracts (Amendment) Regulation, 1937 (Regulation No. I of 1937) and the Chittagong Hill Tracts (Amendment) Regulation, 1939 (Bengal Regulation No. I of 1939)	..	..	..	1
II.	The Chittagong Hill Tracts Frontier Police Regulation, III of 1881	..	..	..	12
III.	List of Acts in force in the Ctg. Hill Tracts	..	..	..	18
IV.	Rules for the Administration of the C. H. Ts.	..	..	..	63
V.	Boundaries of the Chittagong Hill Tracts.				119
VI.	Boundary between the districts of Chittagong and Chittagong Hill Tracts	..	..	..	140
VII.	Boundaries of Forest Reserves	..	..	..	142
VIII.	Notifications	..	..	..	147
IX.	The Chittagong Hill Tracts Loans Regulation, 1938 (Bengal Regulation No. I of 1938) and rules thereunder	..	..	..	151

DETAILS.

I.-The Chittagong Hill Tracts Regulation,
1900 (I of 1900).

Chapter I-Preliminary.

Section.	Page.
1. Short title, extent and commencement	1
2. Definitions	1

Chapter II-Laws.

3. Chittagong Hill-tracts how to be administered ..	1
4. Enactments applicable in Chittagong Hill Tracts ..	1

Chapter III-Appointment & powers of certain Officers.

5. Appointment of Deputy Commissioner & subordinate Officers	2
6. Investment of Deputy Magistrate & Deputy Collector or Sub-Deputy Magistrate & Sub-Deputy Collector with powers of Deputy Commissioner	2
7. C. H. Ts. to be a district under the Dy. Commissioner	3
8. C. H. Ts to be a sessions division under the Commissioner	3
9. High Court	3
0. Power to withdraw cases	4

Chapter IV-Arms, Ammunition, Drugs and Liquor.

11. Possession of firearms and ammunition, and manufacture of gunpowder	4
12. Daos, spears and bows and arrows	5
13. Intoxicating drugs	5
14. Foreign spirit and fermented liquor	6
15. Locally made spirit and fermented liquor.. ..	7

Chapter V- Miscellaneous.

16. Police	7
17. Control and revision	7
18. Power to make rules	7
19. Bar to jurisdiction of Civil & Criminal Courts ..	9
20. Repeal of certain enactments	9

Enactments declared in force in the C. H. Ts. ..	10
--	----

II-The Chittagong Hill Tracts Frontier Police
Regulation III of 1881.

Section	Page
1. Short title, extent and commencement ..	12
2. Interpretation clause ..	12
3. More heinous offences ..	12
4. Less heinous offences ..	14
5. Corporal punishment ..	16
6. Minor punishment ..	16
7. Where person sentenced to imprisonment to be confined ..	17
8. Prosecution, etc., under other enactments ..	17
9. Magisterial powers of Police Officers ..	17

III- List of Acts in force in the C.H.Ts.

1. Acts of the Governor-General in Council ..	18
2. Ordinances of the Governor-General in Council	29
3. Bengal Acts. ..	37

IV-Rules for the Administration of the CHTs.

Administration of Civil Justice.

Rules.

1. How to be conducted ..	63
2. Decision on viva voce examination of the parties	63
3. Particulars of case records ..	63
4. Levy of court-fees ..	63
5. Process fees ..	64
6. Procedure for issue of process and execution of decrees ..	64
7. Rate of interest to be decreed by the Court	66
7A. Limit of decree on account of arrear of interest	67
8. Deeds not to be filed in a suit unless duly regd.	67
9. Suits to be admitted on registered bonds ..	67
10. Orders in civil suits appealable to the Commissioner	67
10A. Suits on account of credit sales ..	67
11. Legal Practitioners and Agents ..	68

Registration of deeds.

12. Deeds to be registered ..	68
13. Deeds not inadmissible in Court by reason of non-registry ..	69

Rule.	Page
14. Engagements not to be registered	69
15. Registration of documents in a language not commonly used in the district	69
16. Attestation of alteration, etc., in a document .	69
17. Registration of instrument relating to immovable property	69
18. Time-limit for presentation of deeds for registration	70
19. Registration of will or authority to adopt ..	70
20. Officers to function as Registering Officer ..	70
21. By whom documents for registration to be presented and penalty for non-compliance with the orders of the Registering Officer ..	70
22. Agents may conduct registration on behalf of certain persons	70
23. Fees to be paid before registration .	71
24. Inspection of books in which deeds are copied and charge for copies thereof. ..	71
25. Registering Officer to satisfy himself of the parties	71
26. Form of endorsement to be recorded by the Registering Officer on the deed .	72
27. Deed to be copied into a book and attested by the Registering Officer. Destruction of unclaimed original deeds	72
28. Registers to be maintained	72
29. Index to be appended to the Register of deeds, when filled up	73
30. Account of receipts and expenditure to be kept by the Registering Officer	73
31. Definition of the words "lease" "movable property" and "immovable property"	73
32. Inspection of Registry book by Commissioner ..	73
33. Time-limit for any party claiming under a deed for suing in Deputy Commissioner's Court for declaration of his right to have a deed registered where registration is refused ..	73
34. The lands: Settlement of Government land, Transfer Partition and Sub-letting-	
(1) Maximum area of a holding and parties to whom leases may be granted	74

(2) Provincial Government may exempt any area from the operation of sub-rule(1)	..	80
(3) Sub-tenants existence on 3rd Dec.1920 and recognised by the Dy.Commissioner shall not be evicted except with the permission of the Dy.Commissioner	..	81
(4) No lessee is allowed to sub-let whole or any part of his land	..	81
(5) Transfer by sale, gift or mortgage - Usufractuary mortgage	..	81
(6) Resumption of unauthorised lease or transfer and disposal thereof	..	82
(7) Partition of holding	..	82
(8) Ejectment of sub-tenant	..	82
(9) Deputy Commissioner's power to fix rent and other conditions of a sub-lease.	..	82
(10) Permanent and heritable rights of a sub-tenant, subject to certain conditions.	..	83
(11) Permanent and heritable right of a tenant directly under Government - condition of ejectment	..	83
(12) Power of ejectment of a tenant or resumption of any land shall be exercised by the Deputy Commissioner	..	84
(13) Inheritance of any Hill Tracts land by the non-residents of the district except with the express consent of the D.C. would not be operative	..	84
(14) The provisions of sub-rules (5),(6),(7), (11) and (13) will apply to existing tenancies only	..	84
(15) Powers of the Dy.Commissioner may also be exercised by the Addl. Dy.Commissioner.	..	84
(16) Powers of the Dy.Commissioner may also be exercised the SDOs if authorised by the Dy.Commissioner in writing	..	84
34A. Natural water-course.	..	85
34B. Jhuming or cultivation on or near the banks of a river prohibited	..	85

SCHEDULE.

(See Section 4)

Enactment declared in force in the Chittagong Hill Tracts.

1	2	3	4	5
Year	Number	Short title or subject	Extent of Modification	application
1843	V	1. Acts of the Governor-Genl in Council. The Indian Slavery Act, 1843.		So much as may from time to time, be in force in the district of Chittagong.
1850	XVIII	The judicial Officers Protection Act, 1850.		Ditto.
1850	XXXIV	The State Prisoners Act, 1850.		Ditto.
1857	XI	The State Offences Act 1857.		Ditto.
1858	III	The State Prisoners Act, 1858.		Ditto.
1860	XLV	The Indian Penal Code		Ditto.
1861	V	The Police Act, 1861		Ditto.
1872	I	The Indian Evidence Act, 1872		Ditto.
1877	XV	The Indian Limitation Act, 1877.		Ditto. In so far not inconsis- tent with the CHT Reg.I of 1900 on the rules for the time being in force thereun- der vide Notification No.5839 dt.14.4.1916.
1878	VII	The Indian Forest Act, 1878.		Ditto.
1879	VI	The Elephants Preser- vation Act, 1879.		Ditto.
1897	X	The General Clauses Act, 1897.		Ditto.
1898	V	The Code of Criminal Procedure, 1898.		Ditto.
1898	VI	The Indian Post Office Act, 1898.		Ditto. (1) The provision to Sub-section(1) of section 7 and the First Schedule shall be omitted. (2) For sub-section (2) of Section 7 the following shall be substituted:- "(2) Unless and until Notification as aforesaid is issued the rates

//(iii) Land exceeding .30 acre in an urban area for residential purposes shall not be settled with any person without prior approval of the Government.

(e) The Deputy Commissioner may, in accordance with such plan as may be approved by the Government, settle with a person land in an urban area for commercial purposes. The salami for such land shall be charged—

(i) at 50 per cent. of market value in the case of hillmen and non-hillmen residents; and

(ii) at 100 per cent. of market value in the case of others.

Rent per acre of land settled under this clause shall be assessed at $\frac{1}{4}$ per cent. of market value.

(f) Market value for the purpose of the aforesaid clauses shall be determined in such manner as may be specified by the Government from time to time.

(g) All settlements of khas lands shall be concluded in the form of a lease deed prescribed or to be prescribed by the Government and shall be registered under rule 12. The rights and liabilities of the lessees shall be governed by such terms and conditions as may be set forth in the lease deed."

By order of the President

J. AHMED

Secretary.

Published in the Dacca Gazette, Part I, dt. the 21st October 1971

GOVERNMENT OF EAST PAKISTAN
REVENUE DEPARTMENT

R.L. Section

NOTIFICATION

No. 1L-15/69/216-R.L.- 16th September 1971 - In exercise of the power conferred by section 18 of the C.H.Ts Regulation, 1900 (Regulation I of 1900), the Governor is pleased to make the following amendments in the Rules for the Administration of the Chittagong Hill Tracts, namely:-

Amendments.

1. In the said Rules, for rule 34, the following shall be substituted, namely:-

district.

(2) The Provincial Government may, by notification in the Official Gazette, exempt any area from the operation of sub-rule (1) for the purpose of reclamation of culturable waste lands in such area with a view to bringing them under cultivation and when any area has been so exempted, lands in the area shall, notwithstanding anything contained elsewhere in these rules, be dealt with in such manner as the Provincial Govt. may, by general or special orders, from time to time, direct.

Contd. 81

(3) (a) Sub-tenants of whatever grade in existence on 3rd December, 1920, and recognised by the Deputy Commissioner shall not be evicted except in accordance with sub-rule (8), nor shall their rent be enhanced except with the permission of the Deputy Commissioner.

(b) Whenever any recognised sub-lease terminates for any reason, the immediate landlord of the sub-lessee shall not again sub-let the land. If the sub-lessee had a tenant under him, that tenant shall continue on the terms on which he holds

(4) No lessee shall henceforth be allowed to sub-let the whole or any part of his land.

(5) No lessee or sub-lessee shall be allowed to transfer by sale, gift or mortgage the whole or any part of his holding without the previous sanction of the Deputy Commissioner, who may not sanction any mortgage other than usufructuary mortgage, such mortgage to extend for a period not exceeding seven years and to provide for the extinction of the whole debt including principal and interest within that period subject to the condition that the mortgage will not, in any event, be extended beyond that period, provided that the Deputy Commissioner may sanction a simple mortgage in favour of Government, or the Agricultural Development Bank of Pakistan, or the Industrial Development Bank of Pakistan, or Co-operative Societies, registered under the Bengal Co-operative Societies Act, 1940 (Bengal Act XXI of 1940) or the East Pakistan Agricultural Development Corporation or any other loan giving agency for such period and subject to such conditions as he may deem fit. The Deputy Commissioner may, however, sanction mortgage of any holding to the East Pakistan Agricultural Development Corporation for loans already advanced prior to the date of

of publication of this notification. Unauthorised transfers will, in no instance, be recognised.

(6) In all cases of unauthorised sub-lease or transfer, the Deputy Commissioner shall resume the land sublet or transferred and may either hold it khas or lease it out with the lessor or transferor, or with the lessee or transferee, or with any other person according to circumstances and the provisions in sub-rule (1)

(7) No partition of a holding shall be made without the consent of the Deputy Commissioner.

(8) A sub-tenant recognised by the Deputy Commissioner is not liable to ejection except by his order. A sub-tenant will ordinarily be ejected -

(a) if he sublets or transfers any part of his holding or fails to show diligence in bringing or keeping the holding under cultivation ;

(b) if he fails to pay an arrear of rent recorded or fixed by the Deputy Commissioner;

(c) if he uses the holding in any manner that renders it unfit for the purposes of the tenancy ;

(d) if he enhances the rent of a recognised sub-tenant under him without permission of the Deputy Commissioner.

(9) The rent of a sub-tenant of any grade recognised by the Deputy Commissioner cannot be enhanced except by the Deputy Commissioner. The rent of such a sub-tenant shall be enhanced if the rent for the land held by him exceeds the rent paid by the landlord or, if the rent of the landlord is also under enhancement, the rent settled as payable by the landlord, by more than 50 per cent except for special

special reasons to be recorded by the Deputy Commissioner in writing. The rent of such a sub-tenant may, subject to this condition, be enhanced by the Deputy Commissioner up to such limit as he considers fair and equitable, on the application of the landlord, if the rent of the sub-tenant has not been enhanced during the ten years previous to the application.

(10) Sub-tenants of whatever grade who have been recognised by the Deputy Commissioner shall have, subject to the provisions of the rules regarding ejection and resumption, permanent and heritable rights in the land for which they pay rent.

(11) A tenant directly under Government shall have permanent and heritable rights in the land for which he pays rent unless there is a definite contract that his right is not permanent or heritable, subject to the provisions contained in these rules for his lease, if any, regarding resumption;

Provided that he shall be liable to ejection -

(i) if he fails to pay an arrear of rent recorded or fixed by the Deputy Commissioner, or

(ii) if he uses the land in any manner which renders it unfit for the purpose of the tenancy, or

(iii) if in accordance with the terms of his lease, if any, he is liable to be ejected or the lease is cancelled for any other reason;

Provided also that if in accordance with the terms of the latest lease or license under which the tenant was allowed to hold the land, all lands not kept under cultivation were liable to resumption, such lands shall be still so liable even though the period of such lease or license has expired and the tenant continues to hold the land.

(12) The power of ejection of a tenant or resumption of any land under sub-rule (11) shall be exercised by the Deputy Commissioner.

(13) Nothing in these rules, or any grant, lease or contract under which land is held in the Hill-tracts shall operate to permit the inheritance of any Hill-tracts land by non-residents of the district except with the express consent of the Deputy Commissioner who in giving his consent shall have regard to the principles of equity and as far as may be to the rights of plainmen which but for this rule would be operative. An appeal from such orders of the Deputy Commissioner shall lie to the Commissioner.

(14) The provisions of sub-rules (5), (6), (7), (11) and (13) will apply to existing tenancies only.

(15) The powers of the Deputy Commissioner under this rule may also be exercised by the Additional Deputy Commissioner.

(16) The powers of the Deputy Commissioner under this rule may also be exercised by the Subdivisional Officers concerned in their respective jurisdiction if so expressly authorised by the Deputy Commissioner by order in writing to exercise such powers.

EXPLANATION - For the purpose of this rule "family" shall include the lessee, his wife, sons, daughters and any other relations dependent on the lessee and living in the same mess.

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By order of the Governor
T. Hossain
Secretary to the Govt.
of East Pak.

Contd. 85

34 A. The flow of any natural water-course cannot be stopped or diverted without the permission of the Deputy Commissioner.
(a)

34 B. The Deputy Commissioner may prohibit jhuming or cultivation on or near the banks of any river, if in his opinion such jhuming or cultivation is likely to cause silting in the river or flooding in lands down stream. Breach of this rule will be punishable by confiscation of the crops grown and by fine which may extend to Rs. 50.00 (b)

34 C. Notwithstanding contained elsewhere in these rules in regard to the settlement of lands, the Board of Revenue may by general or special orders, authorise the Deputy Commissioner to settle any class of land upto any quantity for such purpose and subject to such terms and conditions, as may be specified in such orders either with hillmen or with non-hillmen. (+)

(a) As amended by notification No.2977 E.A. dated the 27th February 1928, published at pages 439-440, Part I of the Calcutta Gazette, dated the 1st March 1928.

(b) As inserted by notification No.4852 E.A. dated the 25th April 1939, published at page 1111, Part I of the Calcutta Gazette, dated the 4th May 1939.

(+) As inserted vide Chittagong Hill Tracts - No.1R-17/60/276- R.L. dated 16-6-61 from the Section Officer to the Government.

GOVERNMENT OF EAST PAKISTAN
LEGISLATIVE DEPARTMENT

East Pakistan Regulation No. I of 1958

THE CHITTAGONG HILL-TRACTS (LAND ACQUISITION)
REGULATION, 1958

A Regulation to provide for the acquisition of land
in the Chittagong Hill Tracts.

Whereas by Proclamation dated the 25th day of June, 1958, under Article 193 of the Constitution of the Islamic Republic of Pakistan, the President has assumed to himself all the powers vested in, or exercisable by the Governor of East Pakistan ;

And whereas the President has, in pursuance of sub-clause (1) of clause (c) of the said Proclamation, been pleased to direct by Notification No.22/11/58-Pol.(I), dated the 4th July, 1958, published in the Extraordinary Gazette of Pakistan, dated the 4th July, 1958, that the power vested in, or exercisable by, the Governor under the constitution shall be exercised by the Governor;

AND Whereas it is expedient to provide for the acquisition of land in the Chittagong Hill Tracts;

AND Whereas by clause (3) of Article 103 of the Constitution of the Islamic Republic of Pakistan, the Governor is empowered to make Regulation for the peace and good government of the excluded area in his Province ;

NOW, THEREFORE, the Governor of East Pakistan, in exercise of the said powers and all other powers enabling him in this behalf, is pleased to make the following Regulation, namely :-

- Short title and commencement.
1. (I) This Regulation may be called the C.H.Ts (Land Acquisition) Regulation, 1958.
 - (2) It shall come into force at once.

Definitions. 2. In this Regulation, unless there is anything repugnant in the subject or context,-

- (a) "Deputy Commissioner" means the Deputy Commissioner of the Chittagong Hill Tracts and includes any officer specially appointed by the Provincial Govt. to perform all or any of the functions of the Deputy Commissioner under this Regulation;
- (b) "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
- (c) "person interested" includes all persons claiming an interest in the compensation to be paid on account of the acquisition of land under this Regulation.

Acquisition. 3. (1) When any land held on valid title, which is not resumable under the Chittagong Hill Tracts Regulation, 1900 or the rules made thereunder, is ^{of}Regu. I _{of} 1900 required for any public purpose, the Deputy Commi-
-ssioner may acquire such land by an order in writing.

(2) When an order is made under sub-section (1), the Deputy Commissioner shall serve a copy of such order on the person or persons interested:

Provided that if the Deputy Commissioner is of the opinion that the service of the copy of such order on each such person will cause delay in taking possession of the land, he may dispense with such service and cause a public notice of such order to be given at convenient places in the locality.

(3) On and from the date of service of a copy of the order or publication of a notice under sub-section (2), the land so acquired shall vest absolutely in the Provincial

Provincial Government free from all incumbrances and the Deputy Commissioner may take possession of such land by using such force as may be necessary.

Compensation. 4. (1) When any land is acquired under sec. 3, the Provincial Government shall pay compensation therefore as may be determined by the Deputy Commissioner and in determining the amount of such compensation, the Deputy Commissioner shall take into consideration, -

firstly, the market value of the land on the date of the order of acquisition, but he shall not take into consideration the changes in the value of the land resulting from the project to which the acquisition relates;

Secondly, the damage sustained by the person interested by reason of the taking of any structures, bamboos, trees or standing crops which may be on the land at the time of the Deputy Commissioner's taking possession thereof;

thirdly, the damage, if any, sustained by the person interested at the time of the Deputy Commissioner's taking possession of the land by reason of serving such land from his other land;

fourthly, the damage, if any, sustained by the person interested at the time of the Deputy Commissioner's taking possession of land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if in consequence of the acquisition of the land by the Deputy Commissioner the person interested is compelled to change his residence or place of business, the reasonable expenses,

Land rights

Article 14.1.

The **rights of ownership and possession** of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Article 17.1.

Procedures established by the peoples concerned for the **transmission of land** rights among members of these peoples shall be respected.

The Convention clearly states that indigenous and tribal peoples have rights to the land they traditionally occupy.

What are “lands which they traditionally occupy”?

These are lands where indigenous and tribal peoples have lived over time, and which they have used and managed according to their traditional practices. These are the lands of their ancestors, and which they hope to pass on to future generations. It might in some cases include lands which have been recently lost.

In Australia, for example, indigenous peoples’ traditional rights to land were recognized as part of the common law of Australia in the *Mabo Decision* (No. 2) of the High Court of Australia on 3 June 1992. The Court stated that “*native title can continue to exist:*

- *where Aboriginal and Torres Strait Islander people have maintained their connection with the land through the years of European settlement; and*
- *where their title has not been extinguished by valid acts of Imperial, Colonial, State, Territory or Commonwealth Governments.”²⁹*

In response to the Mabo decision, the *Native Title Act* was adopted in 1993 and became law on 1 January 1994. It recognizes and protects native title rights, and includes the right to negotiate land and title claims with other stakeholders such as pastoralists, farmers and miners. The High Court’s *Wik* decision of June 1996 established that pastoral leases and native title can co-exist. However, recent developments are diminishing these achievements. The Native Title Amendment Act (1998) which came into force on 30 September 1998 severely reduces Aboriginal land rights.³⁰

²⁹ Commonwealth of Australia. *Mabo. The High Court Decision on Native Title*. Discussion Paper June 1993. Canberra. 1993, p. 1.

³⁰ See ATSIC. *The Wik Decision and the Future of Native Title Rights in Australia*. Paper prepared by the Aboriginal and Torres Strait Islander Commission (ATSIC) for the 15th Session of the UN Working Group on Indigenous Populations, Geneva, 1997. *Program*, No.201, 1998, p. 18-22.

Article 14.2.

Governments shall take steps as necessary to **identify the lands** which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

In order to protect indigenous and tribal peoples' rights to the lands they traditionally occupy, it is necessary to know which these are. Therefore, the identification of indigenous and tribal peoples' lands is important. This is currently happening in Bolivia, Brazil, Colombia, Ecuador and Paraguay, as well as in other countries.

Brazil, for example, adopted *Decree No. 1775* of January 1996 on the administrative procedure for the demarcation of indigenous lands. It includes a provision for appeal against decisions on the demarcation of indigenous lands which had not yet been regularized.³¹

Article 14.3.

Adequate procedures shall be established within the national legal system to **resolve land claims** by the peoples concerned.

In some situations, problems may arise out of land claims. These can be with other indigenous communities, or with outside settlers or other stakeholders.

Again in Brazil, the demarcation of the area known as Raposa do Sol gave rise to disputes. Indigenous peoples have objected to Ministerial Resolution No. 80, which reduces the area by approximately 300,000 hectares, makes access possible to non-indigenous persons, and excludes more than twenty indigenous villages from the area to be demarcated.³² In 2003, the Committee of Experts noted that this resolution had been revoked. Nonetheless, to this date, the disputes have yet to be resolved and the indigenous peoples have not yet obtained an official recognition of their lands, for which reason they continue their struggle.³³



Logging in Bangladesh
Photo : J. Arens



³¹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva. 1997, p. 302; and *ibid.* 1998, pp.316-317.

³² *Ibid.*

³³ www.cimi.org.br

The 1997 Indigenous Peoples Rights Act (IPRA), came about through strong indigenous peoples' movement in the Philippines. However, lobby groups, including mining companies, which were active in areas occupied by indigenous peoples, acted to water down the legal provisions in the Act. The IPRA claims to recognise indigenous peoples' rights to ancestral lands and domains, but in reality, indigenous peoples first have to agree that the state has a prior right to these lands. Even if indigenous peoples are able to acquire a Certificate of Ancestral Domain Title over their lands, the State reserves the right to use the area for the "greater good of national interest".³⁴

The Convention also requires governments to make sure that there are procedures and mechanisms in place to resolve any land disputes.

In the Chittagong Hill Tracts in Bangladesh, there are conflicting land claims between the tribal peoples and families from the plains who have been settled on the traditional lands of tribal people, resulting in the displacement of the original landowners. A peace accord agreed on 2 December 1997 between the Government of Bangladesh and the Jana Samhati Samiti (JSS - People's United Party) calls for the establishment of a national land commission to resolve these claims.³⁵



Swidden field, Chittagong Hill Tracts
Photo : Phillip Gain

³⁴ Degawan, Hermina, "Small-Scale Gold Mining as a Traditional Occupation in the Cordillera, Philippines". In: Thomas, V. (ed.). *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*. Project to Promote ILO Policy on Indigenous and Tribal Peoples, Geneva 2000.

³⁵ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1998, p.313. See also IWGIA. *Indigenous Affairs*, No. 1, 1998, p. 50.

Article 17.3.

Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18.

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

In recognition of the vital nature of land in indigenous and tribal peoples' lives, the Convention calls for **special measures of protection** of their land rights. This includes the following elements:

- the need to respect the special relationship of indigenous and tribal peoples to their lands;
- recognition of their traditional rights of ownership and possession of their lands, including both the individual and the collective aspects;
- the need to identify the areas belonging to indigenous and tribal peoples;
- the need to protect indigenous and tribal peoples' lands from:
 - a) others coming into these lands for their own personal gain without permission from the relevant authorities, as in Brazil, where unregistered gold miners (garimpeiros) invade Yanomami territory;³⁶
 - b) outsiders trying to take the lands of indigenous and tribal peoples away from them through fraud or other dishonest means.

The Convention also states that indigenous and tribal peoples have the right to pass lands on from one generation to another, according to the customs of their own community.



Laos : Lue village in Phongsaly
Photo : Inthasone Phetsirseng

³⁶ ILO. *Report of the Committee of Experts on the Application of Conventions and Recommendations*. Geneva, 1995, p. 288; and *ibid.*, 1996, p. 267; and *ibid.*, 1998, p. 316.

Resolution adopted by the General Assembly

[*without reference to a Main Committee (A/61/L.67 and Add.1)*]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting
13 September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

¹See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social

progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

²See resolution 2200 A (XXI), annex.

³A/CONF.157/24 (Part I), chap. III.

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

⁴Resolution 217 A (III).

their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources

equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law

and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.