

# one introduction

The Chittagong Hill Tracts (CHT) is a hilly, forested area situated in the south-eastern corner of Bangladesh bordering India (Tripura and Mizoram) to the north and north-east and Myanmar (Arakan and Chin) to the east. The area is an extension of the Hindu Kush-Himalayan belt, and thus markedly different to the flat delta plains areas of mainland Bangladesh. The CHT covers about nine per cent of the total area of Bangladesh and accounts for slightly more than half the forest lands (SAWTEE 2002). The area was originally inhabited exclusively by some dozen indigenous ethnic groups, but there has been substantial in-migration into the hills from the plains of Bangladesh over the years. The area has been a scene of unrest since the colonial era; from the 1970s armed resistance to the Bangladesh government led to extensive militarisation, many deaths, and considerable displacement of the population (IISH 2001).

A major turning point in the situation came when the Awami League government signed a 'Peace Accord' on 2 December 1997 with Shanti Bahini, the armed force of the indigenous people of the CHT. In addition to laying down terms for re-establishing peace, the Accord recognised the indigenous people's right to land, culture, language, and religion. It is widely thought in Bangladesh that land-related problems have contributed to the longstanding political unrest and conflict in the CHT region. The Accord set out detailed provisions for strengthening the system of self-governance in the CHT, and redressing some of the most urgent land-related problems. These include the resolution of land disputes by a commission on land, the transfer of authority for land administration to the re-organised and strengthened hill district councils (HDCs), the cancellation of leases granted to non-residents during the conflict period, the distribution of land to indigenous<sup>1</sup> or 'tribal' [sic] villagers, and the strengthening of customary land rights. Four years on, however, these problems remain largely unresolved (Roy 2000a). The resolution of land-related problems is deemed crucial for long-term peace in the CHT, an opinion shared by politicians and academics alike (CHT Commission 1991, p 58; Mohsin 1998, p 114). A fragile peace still holds, but tension between the indigenous people and ethnic Bengali settlers regarding land-related disputes has yet to be diffused.<sup>2</sup>

<sup>1</sup> The term 'indigenous' is not without controversy. In some Bangladeshi laws this word is used (e.g., Act 12 of 1995, Rule 4, CHT Regulations) but in recent legislation the term 'tribe' seems to be more favoured by the government. Throughout this paper, the term 'indigenous' has been used, as it is more acceptable to the people concerned than other comparable terms. 'Hill people' is also acceptable to many. However, the appellation 'tribe' is nowadays rejected by most as racist and derogatory.

<sup>2</sup> For a recent incident of tension between Bengali and indigenous people in the CHT see *The Daily Star* and *Pratham Alo*, Dhaka, 17 and 18 May 2001. Peace is also threatened by the low-level conflict between two political parties of the indigenous people, the pro-Accord JSS and the United People's Democratic Front (UPDF), which opposes the Peace Accord as too weak on hill people's rights calls for 'full autonomy'.

Rights over various categories of land – including forested land – based upon a competing plethora of laws, customs, different uses, and systems are still strongly contested, especially between indigenous and non-indigenous peoples. The latter include government officials from the Department of Forests, the land administration authorities at the district and sub-district levels, and transmigrated ethnic Bengali settlers. Moreover, indigenous communities in the CHT do not form a homogenous group. They come from eleven distinct peoples or ‘jati’, each of which is further sub-divided into clans and sub-clans with varying cultivation methods and resource management practices, the subtle nuances of which are not easily perceptible to outsiders.

In the case of land categorised as ‘forest’, ironically the situation seems to have worsened in the period *after* the signing of the Accord. Among the most controversial post-Accord developments is the enlargement of the area of Forest Department-controlled reserved forest, or ‘RF’ (Roy 2000e, pp 178-180) and the proposed introduction of a mode of social forestry to be funded by the Asian Development Bank (ADB) that many believe is too state-centric (Roy and Halim 2001a). Recent developments do not suggest that such forest-related problems will be reasonably addressed in the near future. The situation regarding non-forested land is more complex; there being both positive and negative indications. The proposed devolution of substantive land administration authority upon the HDCs, when it actually happens, is expected to be a positive development as this will enable the local people’s representatives in these councils to have the major say over land administration in their respective districts. Similarly, the problem of land dispossession suffered by the indigenous people is also expected to be at least partially redressed through the decisions of the specially constituted Commission on Land. The groundwork for the work of the HDCs and the Commission has been laid through legislation (HDC Amendment Acts of 1998 and the CHT Land Commission Act of 2001), but the HDCs and the Land Commission have yet to start their work. Both of these bodies will have to address highly complex issues, especially where customary laws conflict with formal legislation on land and related matters. Therefore, a purely legalistic approach may be less than adequate to deal with these issues.

This paper attempts to discuss these issues from the perspective of competing rights over CHT land and forest, and the different interpretations of these rights. A brief discussion of the custom-based rights of the indigenous peoples is included as essential background. Some of these have been partially formalised by written legislation; thus the laws sometimes expressly distinguish between the rights of indigenous people (‘hill people’ or ‘tribes people’) and others. However, in some cases the distinction between indigenous people and others is not important, for example where it concerns privately registered commercial lands. Therefore, unless relevant to the context, there will be no distinction made between the indigenous people and the Bengali-speaking people, or the groups and sub-groups within these communities and peoples in other sections of this paper.