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resolving the conflicts: within and beyond the CHT accord of 1997

Cancellation of Non-Residents' Leases

Of the land related problems identified above, some have been directly addressed by the CHT Accord, some have been indirectly referred to, while others have not been tackled at all. The Accord states that any lease of land that has not been utilised for more than ten years will be cancelled. It is reported that the newly created Ministry of CHT Affairs has instructed the collectorate officials – the deputy commissioners – to cancel these leases, but it seems that nothing of substance has yet been done. Since land is a matter for the Ministry of Land, and not the Ministry of CHT Affairs, the orders will perhaps have to come from the former. It should be mentioned that where land has remained unutilised – even for less than ten years – in violation of the conditions of the lease, the lease may still be cancelled. This may call for a decision at the cabinet level, which is itself an uncertain prospect, given the so-far silent attitude of the new government on crucial aspects of the CHT Accord, including land-related issues.

The dispossession of land through the population transfer programme has not been directly addressed in the Accord. Members of the indigenous people's party, the JSS, have claimed that the Government of Bangladesh had verbally agreed to resettle the Bengali settlers outside the CHT, a claim denied vehemently by the previous Awami League government.[22] In any case, we may assume that the matter has been addressed indirectly through the provision by the land commission, and partly by the provision on the grant of lands to landless 'tribal' people. However, to what extent justice can, or will, be provided through the commission and the land grants will depend upon various factors, such as those outlined below.

Adjudication by the Land Commission

The land commission is headed by a retired judge of the High Court and includes the Commissioner of the Chittagong Division, a civil servant, the three chiefs, the three district council chairpersons, and the chairperson of the CHT Regional Council. The secretary of the commission has also been named, a CHT hillman, seconded from the judicial service. The commission, however, has yet to start its work. The 1997

[22] The present BNP government is even more unlikely to agree to having the settlers rehabilitated outside the CHT since the settlers themselves voted overwhelmingly for the BNP, and it was a previous BNP government that officially sponsored the transmigration programme.

Accord states that no appeals will lie against the decisions of the commission and that the commission will be obliged to take into account the "laws, customs and practices prevailing in the CHT."[23] However, the exact process of adjudication – including the detailed terms of reference – is to be determined by the commission itself, when it finally meets.

Quite apart from the question of how much authority should be wielded by the chairperson of the commission, the exact nature of the justice meted out to litigants will depend upon various factors. These include the process of inquiry, the relative weight provided to custom-based rights vis-à-vis rights based upon written title, the burden of proof, and so forth. Among the most difficult issues before the commission will be disputes involving Bengali settlers in possession of title deeds and indigenous people claiming rights based on customary rights, or rights that fall short of full ownership. Among other related questions that will have to be dealt with are: (i) the priority to be provided to antecedence in time for ownership or possession; (ii) the conflict between customary rights and written title; (iii) the burden of proof (will there be any presumptions of law or fact?); (iv) the question of whether the settlement grants in the period concerned were legally valid in the first place, without considering customary rights; and so on. A basic reading of the law governing settlements and leases – Rule 34 of the CHT Regulations – suggests that the government was only authorised to make leasehold grants to non-residents for 'commercial' or 'industrial' purposes and freehold grants in the case of 'residential' purposes.[24] However, during the transmigration programme of the 1980s, the government made freehold grants to the settlers, mostly for agricultural purposes. Therefore, it remains to be seen how the matter is eventually addressed by the commission. The fact that the majority of its members are of an indigenous background might suggest that customary law will be given high priority, but this will depend upon the terms of reference, including the relative weight of the chairperson's opinion in the absence of consensus among the other members, and also on the political backgrounds and other biases of the members, irrespective of their ethnicity.

Optimum, equitable, and sustainable use of land in the CHT will not be possible if the major land-related disputes remain unresolved. Therefore, these need to be resolved, or at least reasonably addressed, to ensure both justice as well as unhindered and peaceful access to, and use of, land and forests by those living within and around them. The land commission may well provide remedies for the numerous cases that come before it, but it is suggested that a purely legalistic approach may leave one or other of the parties concerned in a land dispute hugely dissatisfied. This would have undesirable implications with disputes pitting indigenous people against Bengali settlers. Therefore it is incumbent upon the government to make a detailed plan to rehabilitate those whose claims are denied by the commission but whose situation merits humanitarian intervention based on equity and justice.

Forests

Unlike the other matters mentioned above, the disputes regarding the forest areas may be considered a grey area in the Accord, which remains entirely silent on the

[23] Clauses 5 and 6, Part D, CHT Accord 1997
[24] For a detailed discussion of the legality/illegality of the settlement process, see Roy 1997b.

administration of the RFs. The only provisions of the Accord that indirectly address the RF areas are the clauses regarding the royalties on forest produce and mineral extraction to be shared by the government with the HDCs. This, however, is unlikely to be accepted by the MOEF, as the ownership and administration of the RFs is vested solely in this ministry. Regarding the creation of new RFs, it has been argued by the Committee for the Protection of Forest and Land Rights in the CHT that the process violates the 1997 Accord as well as the Local Government Council Acts of 1989, both of which formally represent the supreme authority on land administration to the HDCs.[25] On one occasion, a writ petition was filed in the High Court challenging the reservation process, but the High Court advised the petitioner to first exhaust his remedies by applying to the CHT Regional Council. This matter is still pending. It is also possible that because the matter concerns a land dispute it may be taken before the land commission. This would delay matters even further, and thereby deny the affected people justice.

The conflicts in the old reserved forests, which have not been directly addressed by the 1997 Accord, may drag on for many more years unless the government revises its current policies on forest management. Given current trends, this does not seem imminent, especially considering the recent amendment to the forest laws through the Forest (Amendment) Act of 2000, which suggests that the government wishes to continue with its regulatory and policing approach towards forest management. The introduction of measures to regulate land use on land adjacent to forests, and the strengthening of the quasi-police powers of FDOs, leave little room to doubt that custom-based land rights are still far from being tolerated, let alone respected (Roy and Halim 2001a). The 2000 Act does formally introduce the concept of social forestry, and this could have opened a window of opportunity to promote a participatory approach to forest management, but this aim seems to have been subverted by measures that suggest that the so-called social forestry programmes actually seek to raise commercial plantations under the control of the Forest Department. Critics of the draft Social Forestry Rules – including forest dwellers, organisations of indigenous peoples, environmentalists, and NGOs – suggest that the 'social' and 'forestry' elements of the prescribed model are of little value. They have demanded that the draft rules be amended to be more respectful towards the rights of participants in the social forestry projects (Roy and Halim 2001). It remains to be seen how the matter will be addressed. The revised draft rules have reportedly been sent to the ADB (Bangladesh's major partner in forestry) for its comments, before being finalised.

In order to check or at least minimise the level of deforestation in the government-managed forests, a concerted effort to both control corruption and theft, and include the local communities in the management and control of the forests is needed. The latter might actually be far easier to implement if the government were to take bold steps to revise its old-fashioned, state-centric forest management policies. Indigenous people, NGOs, and environmentalists from different parts of the country have demanded legal and policy changes not only to bring about the joint management of forests between the Forest Department and local communities, but to actually offer

[25] An undated leaflet circulated by this committee claims that the reservation process also violates the CHT Regulation, 1900 and the Forest Act of 1927.

local communities a direct share in the benefits from forestry.[26] If this is not done, the remaining government-managed forests and plantations are almost certain to be denuded within a decade or less. Indigenous people in the CHT have demonstrated their skills in forest management and in tree and bamboo farming. It is only logical that these experiences and the traditional knowledge systems and innovations be utilised for the benefit of all, with the prior informed consent of the community concerned, in accordance with Agenda 21 and the Convention on Biological Diversity.

Future Land Administration under the Hill District Councils

The 1997 Accord prescribes three major changes to the land administration system in the hill districts. To begin with, no grant, settlement, transfer or acquisition of land in the CHT is to take place without the consent of the concerned HDC. Secondly, land administration is to be added to the HDCs' list of transferred subjects. In addition to this, HDCs are to concurrently share authority over the headmen (and other revenue officials) along with the circle chiefs and DCs. As of June 2002, these powers have not been transferred to the HDCs. The CHT Regional Council – led by the indigenous people's party, the JSS – has complained bitterly of delays in the process of transfer of powers to the HDCs and the CHT Regional Council.[27] One of the most important priorities for the local people is to be able to obtain titles to land through a process that is quick, easy, and cost-free. However, the mere transfer of authority from plains-men bureaucrats to indigenous councillors cannot by itself guarantee justice to the CHT people. Thoughtful reforms are needed that can at least partly address the problems of corruption and circuitous official procedures that have bred corruption, and have been the bane of landless people all over the country.[28] Previously, non-residents could not acquire land in the CHT at all, while each local farming family could obtain freehold grants of up to 25 acres (10.2 ha) of land. This was curtailed to 5 to 10 acres (2.5-4.5 ha) through a legal amendment in 1971, which also provided that non-resident industrialists could obtain leases of land up to 100 acres (40.5 ha) or more. This trend needs to be reversed through legal amendments.

Privatisation

The cessation of organised hostilities in the CHT has hastened the pace of marketisation and privatisation in the region. Consequently, more and more hitherto swidden and forest commons are being converted into homesteads and family-owned orchards and plantations. This means that those who, for whatever reason, cannot obtain a private plot are now deprived of the use of the former commons as well as having no access to a plot of their own. Similarly, some areas of the Karnaphuli reservoir near Rangamati have been leased out to non-resident entrepreneurs, causing conflict with local people who used the area for fishing and for navigating their canoes and boats to and from the market. This is also a trend that could adversely affect the resource rights of the relatively poor.

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[26] These were among the unanimous demands contained in the *Rangamati Declaration* dated 19 December 1998 and the *Dhaka Forests Declaration* adopted on 9 June 2001. The latter was adopted at a Workshop on Forest Management and Land Rights organised in Dhaka by the Committee for the Protection of Forest and Land Rights in the CHT, SEHD, and Taungya

[27] This has been a constant complaint of Jyotirindra Bodhipriyo Larma, the present chairman of the CHT Regional Council and leader of the indigenous people's party, the JSS (which led the armed movement for autonomy in the CHT from 1972 to 1997).

[28] For a detailed discussion of the CHT administrative system see Roy 2000b.

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Indigenous fishermen in the Karnaphuli reservoir (Kaptai Lake)

Just as important is the fact that privately registered farm land is also being sold more frequently. On one hand this is helping local farmers liquidate their assets and raise the so-far elusive capital for their farming and other ventures. The other side of the coin, however, shows economically poor farmers being induced to sell their land at prices dictated by the few cash buyers. The buyers are usually the more affluent city cousins of the sellers. Furthermore, communities living in the more inaccessible uplands and highlands do not share the same motivation for becoming registered owners of their land, which as yet has little market value. People in these more remote areas live largely off swidden farming, hunting, and gathering and have little reason to fear dispossession. They are therefore reluctant to brave the rigours of city offices and pay bribes to officials to obtain registration documents. Prevailing social and cultural conditions, and the hidden costs of illegal rent-seeking, may also delay the process further. In the long run, these people's tenure is rather precarious. Unless affirmative action is taken to safeguard the interests of these remote communities and other disadvantaged sections of the rural population, the rising inequities could spell further unrest and hinder development needs. A combination of measures for easy granting of land titles (such as are in place in Bolivia[29]) and preventing the privatisation of selected swidden, grazing, and fishing commons could at least partially address the problems of the landless people.

[29] In Bolivia, the Government of Denmark is financing a project on land titling for indigenous people. Both Bolivia and Denmark have ratified the International Labour Organization's (ILO) Convention No. 169 on Indigenous and Tribal Peoples, which contains provisions for the protection of indigenous (and tribal) peoples' individual and collective land rights.

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Usui (Tripura) woman and child