Chapter 4
Property Regimes, Tenure and Tenancy

4.1 Land Title and Revenue Administration

Two types of land tenure are observed in CHTs: private (freehold) and usufruct (leasehold). The latter is the most contested form of property between the hill and plains' peoples.

In the CHTs, a big difference exists between 'flatland' and '*jhum*' land. Land titles for flatland were introduced as early as 1900. Such land has always been limited—about 110,000 ha at its peak and now 60,000 ha after dam construction. Holders of land titles have full rights to transfer lands to anyone legally recognised as CHT residents. This system has, over a period of time, resulted in much of these lands being owned by comparatively few landholders who lease them out or cultivate them with the help of landless workers. While flatland is an object of property, *jhum* land is not owned by anybody. It is common property. However, to the state it is Unclassed State Forest (USF). People simply use the land for *jhumming* or, nowadays, for agroforestry or fruit cultivation. They are traditionally concerned with rights of use not with ownership. This has serious implications for safeguarding their interests.

To understand the nature of rights over land in CHTs one needs to go back to history. The Chakmas, the most numerous among the tribals of the CHT, had a relatively settled way of life compared to other tribes. Although their *jhum* cultivation was nomadic, their 'parent' villages were stationary (Serajuddin 1984). Fixed settlements made collection of tribute and support of a tribal hierarchy possible. Mughal rulers recognised two domiciled *zamindar*(s) or chieftains as the local collectors of revenue. These two chieftains controlled CHT revenue collection until 1860. Initially, they collected revenue from their own clans only. However, gradually, with increased power, they collected from other hill people living under their jurisdiction. Originally collection was not organized. However, when the British acted in concert with the hill chiefs, escape became difficult.

The British encouraged a permanent model of cultivation, i.e., plough cultivation. Re-

claimable lands were leased out to tenants. Such leasing was known as *amalnama*, and it amounted to little more than permission to cultivate land within certain areas, subject to provisions regarding payment of rent. Since 1921, tenants received permanent and heritable rights to all *amalnamas* for plough cultivation. The government could resume actual possession of the land that had been reclaimed should occasion arise, but it had to pay tenants fair compensation. *Jhumias* took to plough cultivation on a large scale after 1947.

The concept of traditional land rights is not well understood by people migrating from the plains. Once a hill person has been displaced it becomes extremely difficult to reoccupy land that has been taken by a settler. The occupier pays a tax to the chief, part of which goes to the government. '*Jhum* land 'belongs' to the one who occupies it first and registers with the headman.' In this context, the state is the ultimate owner of all land in CHTs.

4.2 The Regulation of 1900

In May 1900, the Chittagong Hill Tracts' Regulation 1900 came into effect. The Regulation (Rule 34) substantially restricted possession of land by outsiders but did not ban it totally. Plains' people could acquire land for rubber plantation or any other plantation on a commercial basis for industrial and residential purposes. Restrictive measures on migration from outside CHTs were imposed in the sense that no non-hill person could enter or reside in CHTs without obtaining a permit from the Deputy Commissioner.

Restrictions on the operation of a 'free land market' were imposed. No lessee or sublessee could sell, gift, or mortgage the whole or any part of a holding without the previous sanction of the Deputy Commissioner. Unauthorised transfers were not recognised and were discouraged in the manner that the Deputy Commissioner resumed the land either to hold as *khas* or resettle. Partitioning of holdings was also discouraged in the sense that it required the prior permission of the Deputy Commissioner or Sub-Divisional Officer. The rights of sub-tenants were protected and they could not be ejected except on grounds of inefficiency, failure to clear up rents, degrading the land so that it was rendered unfit for tenancy, and increasing the rent of a recognised sub-tenant.

It is interesting to note that there were certain provisions in the Regulation that took note of environmental considerations, knowingly or unknowingly. For example, the flow of a natural water courses could not be stopped or diverted without the permission of the Deputy Commissioner as it might cause silting of rivers or inundation downstream. Sub-tenants were barred from degrading the land to the extent that it caused the lands to be unfit for purposes of tenancy. *Jhumming* on or near river banks was also liable to be prohibited if, in the opinion of the Deputy Commissioner, it was found to be responsible for siltation of rivers or inundation downstream.

Restrictions on increasing the number of non-hill people or non-residents of the district in respect of any holding or inheritance might have had salutary effect on the environmental quality of CHTs. This measure helped to limit the size of the hill population and thus allowed environmental quality to be maintained; for example, wildlife sanctuaries were kept intact and the expansion of agriculture was limited.

4.3 1971 Amendment

Amendments to Rule 34 of Regulation 1900 were made in September 1971. The Bangladesh government representatives often suggested that the 1900 Regulation was no longer in force. However, in 1989,

when the government enacted legislation to establish new Hill District Councils, there was also legislation to repeal the 1900 Regulation. In December 1990, the CHT Commission was told that this legislation had not yet come into force because the government felt that the 1900 Regulation remained the source of legal authority. However, for quite some time the government of Bangladesh insisted on the constitutional right of citizens to move or settle in any part of the country. This provision of the Constitution, which is the supreme law of Bangladesh, it was argued, made the restrictions on settlement in the CHT regulations of 1900 legally not obtainable. Some of the salient 1971 amendments made are as given in the passages below.

4.3.1 Settlement of Khas (cultivable or cultivated) Land

The regulation reads, 'the quantity of cultivable flatland to be settled for plough cultivation by a single family of hillmen or non-hillmen residents shall be such as added to the quantity of such land already in its possession does not exceed five acres. In addition to the flatland for plough cultivation, land for grove plantation not exceeding five acres may be settled by such family.' Amended to, 'but in cases where the performance of a lessee is found by the Deputy Commissioner to be highly satisfactory, a further quantity of land for grove plantation may be settled with him which added to the quantity of grove land already in his possession does not exceed 10 acres.'

4.3.2 Settlement of Hill Land

'Normally five acres of hillside land for full or modified terracing may be settled with a single family of hillmen or non-hillmen residents. But if, on personal inspection by the Deputy Commissioner, the performance of the lessee is found to be satisfactory, a further area of up to five acres may be settled with the lessee. In a deserving case, the Divisional Commissioner may settle hillside land for full terracing with a family of hillmen or non-hillmen residents of up to 100 acres. No settlement above 100 acres shall be made with a single family without the prior sanction of the Board of Revenue.'

4.3.3 Rubber Plantation

'For rubber plantation on a cottage industry basis, the Deputy Commissioner may settle land of up to five acres with a single family of hillmen or non-hillmen residents. In deserving cases, the Deputy Commissioner may settle up to 10 acres with each such family. Settlement of land for rubber plantation exceeding 10 acres with a single family shall not be made without prior sanction of the Board of Revenue. Land for rubber plantation may be settled by the Deputy Commissioner with an outsider with prior sanction of the Board of Revenue.'

4.3.4 Settlement of Land for Other Purposes

While the amendment says that 'no settlement in the district (CHTs used to be a single district in 1971 when this amendment was made) shall be made with outsiders without the prior approval of the Board of Revenue', it proves that 'land for establishment of industrial plants outside urban areas may be settled by the Deputy Commissioner with deserving industrialists with prior approval of the Board of Revenue; and for residential purposes by the Deputy Commissioner in urban areas with deserving hillmen and non-hillmen residents; and for commercial and industrial purposes, the Deputy Commissioner may settle land in urban areas with hillmen and non-hillmen residents.'

4.3.5 Lease and Tenancy

'All settlement of land shall be concluded in the form of a lease deed prescribed by

the Board of Revenue and shall be registered.' 'A tenant directly under Government shall have permanent and heritable rights on the land for which he pays rent unless there is a definite contract that his rights are not permanent or heritable.' 'No lessee or sublessee shall be allowed to transfer by sale, gift, or mortgage the whole or part of his holding without the previous sanction of the Deputy Commissioner.' One appreciable clause of the 1971 amendment was that 'no outsider shall be allowed settlement of any land for plough cultivation or grove plantation without prior sanction of the Board of Revenue.'

Amendments to Rule 34 of Regulation 1900 in 1971 and 1979 further defined the power of the Deputy Commissioner to 'regulate or restrict the transfer of land' and 'to regulate the acquisition by the government of land required for public purposes'

4.4 Recent Changes in Land Management

Under pressure of an insurgency, the government started making a relaxed interpretation of Article 36 of the Constitution and began controlling the arrival and settlement of people from the plains. Laws enacted in 1989 gave the new Hill District Councils a veto power on transfer of land to settlers. A parliamentary committee was formed in 1992 with responsibility for making recommendations to solve the problems of the CHTs. The committee carried out negotiations with insurgents and succeeded in bringing in a series of temporary cease fires. A significant output of the dialogue between the parliamentary committee and representatives of the insurgents was the introduction of a cadastral survey of land in 1993. It may be noted that the political instability observable in CHTs has, by and large, arisen from the land problem, which is highly sensitive.

In December 1997 a 'peace agreement', known as the CHT Treaty, was signed between the government of Bangladesh and the *Parbatya Chattagram Jana Sanghati Samity*. The treaty contains the following provisions regarding the land question.

Under Section 34, land-related subjects, such as land management, environmental protection, and development, local tourism, issue of licence to local industries and businesses, Kaptai water resources use, irrigation of other rivers and canals, and *jhum* cultivation, have been included in the functions and responsibilities of the Hill District *Parishad*(s) (councils). Holding tax on land will be one of the sources of earnings of the *Parishad*. Moreover, *Parishad*(s) will receive partial royalty of contracts by government for search and exploration of minerals and a tax on catching fish. Internal refugees of the three hill districts will be rehabilitated through their proper identification by a task force. The land record and right of possession of the tribal people will be ascertained after finalising ownership of the land of tribal people. The government will ensure the leasing of two acres of land, in respect of localities' subject to availability of land, to landless tribals or tribals having less than two acres of land per family.

A land commission will be constituted under a retired judge for the disposal of all disputes relating to land. Besides settlement of land disputes, this commission will have full powers to annul all rights of ownership on land that has been given in illegal settlement or encroachment. No appeal can be made against the verdict of this commission, which will be treated as final. This will be also be applied in cases of fringe land. However, the most significant provision of the treaty provides that, whatever exists in the currently prevailing laws, no lands in the district, including leasable *khas* lands, can be leased out, sold, purchased, or transferred without the prior permission of the *Parishad*. This will not be applicable in the cases of reserved forest, Kaptai Hydroelectricity Project area, Betbunia Satel-

lite Station area, state-owned industrial enterprises, and lands recorded in the name of the government. Whatever exists in the currently prevailing other laws, the government cannot acquire or transfer any lands, hills, and forests under the jurisdiction of the Hill District *Parishad* without prior discussion and approval of the *Parishad*.

4.5 Impact

Through a change in laws in land administration in 1971, grants of leases to non-residents, especially for establishing industries and raising commercial plantations, were allowed with the prior consent of the Board of Revenue. An amendment in 1979 removed the necessity of obtaining the consent of the Board of Revenue. The amount of land grants to residents was reduced; restrictions on land grants to non-residents were removed to facilitate the setting up of commercial plantations and industries. A large number of leases was provided to non-resident individuals and corporate bodies in all the three hill districts. However, when one looks at the way these lands are being used, it is clear that only a small percentage of these lands is being used for the purposes for which grants were given. Results are disappointing, even from an economic perspective alone. It is reported that, in some cases, land remains totally unused. Many of these lands were—and in some cases still are—occupied by indigenous people who have been living on and cultivating them for generations. These people's land rights have been violated, but, since most of them are unlettered and marginalised farmers, they can do little to obtain their land rights (Roy 1998).