

five legal and administrative system

Land Laws and Land Administration Authorities in the CHT

The CHT administrative system includes both formal government institutions and the semi-formalised, traditional offices of the ‘circle’ chiefs (rajas), headmen, and village chiefs or elders (karbaries). The CHT legal system incorporates both codified and customary laws. Therefore, the rights over forests and other land may not always be clearly defined as a result of the existence of overlapping rights to the same parcel of land. There are also conflicting provisions in the various laws, including the British-promulgated CHT Regulations of 1900 on the one hand and the Hill District (Local Government) Council Acts of 1989 and the CHT Regional Council Act of 1998 on the other.

Most of the formalised land and forest laws of the region date back to the British colonial period (1860-1947). Although some legal amendments were made during the Pakistani era (1947-1971) and after the independence of Bangladesh in 1971, the pattern of land and forest management has essentially remained as state-centric and colonialist as it was during British times, where the benefit of the policy accrued not to the local people but to the colonising state. However, more recently corruption within the government system means that the most direct beneficiary of land and forest policies is not the state but corrupt government officials and dishonest traders and business people, most of whom are not local.

There are two more important differences between the colonial and the post-colonial time. During the British era, in-migration to the CHT was strictly controlled, and non-residents were not allowed to acquire land rights within the area.⁸ This was the same in various indigenous peoples’ homelands that now form part of north-eastern India. Most of these territories were recognised as ‘fully excluded areas’ in the Government of India Act 1935, and are today governed by the Sixth Schedule to the Constitution of India. People not considered as indigenous to these territories still do not have the right to enter or reside within such states by virtue of the ‘Inner Line’ system. However, in Bangladesh these restrictions were gradually relaxed. The law requiring non-natives to obtain a written permit to enter into the CHT – Rule 52 of the CHT Regulation – was repealed in 1930. Then in 1971, an amendment to Rule 34 of the Regulation allowed land grants to ‘outsiders’ in a restrictive manner. A further amendment to this rule in 1979 watered down this restriction even further. Nowadays, small land

⁸ Similar restrictions on the entry of non-indigenous people and their expulsion from the region were contained in Rules 52 and 51 of the CHT Regulations, respectively. The former was repealed in 1930 and the latter was struck down as unconstitutional by the High Court of Dhaka in 1964.

grants for residential and agricultural use are allowed if the mauza headmen so recommend, but in the case of large-scale leases for commercial ventures, especially if it is for outsiders, it is debatable whether the district collectorate may issue such leases without the concurrence of the mauza headmen. When land administration authority is finally transferred to the HDCs, the HDCs may be free to reintroduce restrictions on land ownership by non-residents. The second important difference to the colonial era is that the administration of the forest areas was far stricter during the British period, when theft and pilfering from the government-managed forests was extremely rare and settlements within the RFs were far fewer.

The CHT has two major systems of land administration, one for the RF areas, and another for the rest of the region. The RFs – covering just below a quarter of the region – are administered by the Bangladesh Forest Department (BFD) under the Ministry of Environment and Forest (MOEF). The rest of the CHT is administered by a medley of political and bureaucratic authorities that include both the traditional institutions of the chief, headmen, and karbaries, and the formalised elective councils of various tiers, from the union to the regional level. The nascent CHT Regional Council is the apex regional body that reports to the newly created Ministry of CHT Affairs.

The land rights regime in the CHT is as complex and pluralistic as many other aspects of CHT administration. Laws applicable to the CHT include written laws passed through formal processes, executive orders of district officials and their senior authorities, and orally inherited traditions, customs, and land uses of the indigenous people. The personal laws of the indigenous peoples of the CHT, including the systems of marriage, divorce, child custody, and inheritance, are regulated by the traditional institutions in the customary way. Within the indigenous population, only the Marma women inherit property along with men, as in the case of Muslim women, although in both cases women inherit less than men. Women from the other indigenous peoples and the Hindu Bengali community are only entitled to rights of maintenance. Conversely, among the Garo (Mandi) and Khasi peoples in north-central and north-eastern Bangladesh, only the women have the right to inherit property.

Customary Laws

In some cases, custom-based rights have been transformed into written laws or have been formally acknowledged by legislation or executive orders. The best example is the right of indigenous people to homestead land and forest resources.⁹ However, most customary land rights remain unacknowledged, both in the forest areas and especially in the rest of the region. Some of the more important of these rights are summarised in Table 10.

The requirement that the mauza headmen be consulted before the natural resources of the mauzas can be utilised may be regarded as an indirect acknowledgement of the indigenous peoples' rights over the natural resources of their mauzas to the exclusion of others. The indigenous people of the rural areas, especially the mauza headmen and the karbaries are usually well acquainted with these customs and practices, but the formal legal status of various other customary rights is still to be defined, as these matters have never been addressed in a detailed manner in statutes and policy guidelines or through judicial pronouncements. A test case will be the

⁹ Rule 41A, CHT Regulations, 1900; CHT Forest Transit Rules, 1973.

Table 10: **Important Customary Resource Rights of CHT Residents**

Natural Resource	Right-Holder	Regulatory Law/Custom	Regulating Authority
Homestead lands	Indigenous family	Rule 50, CHT Regulations	Headman
Swidden (jhum) lands	Indigenous family	Rule 41, CHT Regulations	Headman, DC
Used swidden lands	Indigenous family	Traditional customs	Headman
Forest produce	Mauza residents	Rule 41A, CHT Regulations	Headman and karbaries
Grazing lands	Mauza residents	Rule 45B, CHT Regulations	Headman, DC
Grasslands	Mauza residents	Rule 45, CHT Regulations	Headman, DC
Wild game	Indigenous residents	Traditional customs	Headman, circle chiefs
Marine resources	Mauza residents	Undefined	Headman
Large water bodies	Mauza residents	Undefined	Headman
Smaller aquifers	Mauza residents	Undefined	Headman
Natural resources	Mauza residents State	Standing Orders of DC HDC (Amendment) Acts, 1998	Headman DC

Source: Fry (2004)

decisions of the future Commission on Land (a creation of the CHT Accord of 1997) which is to settle disputes over land while being obliged to take into account “existing rules, customs and usages of the Chittagong Hill Tracts” (Part D, Paragraph 6(b), CHT Accord).

As with the laws, the system of governance and administration in the CHT is also unique to the region, including both traditional authorities and modern state institutions. As in other parts of Bangladesh, in the CHT civil service officials and elected local government leaders of the lower tiers play an important role in local administration and formalised development work, but this authority is shared by the aforesaid officials with two sets of institutions that are present only in the CHT. These include the largely hereditary traditional institutions of the karbari, mauza headman, and circle chief¹⁰ on the one hand, and the three hill district councils and the CHT Regional Councils on the other.

Ordinarily, the supreme power over land administration is formally vested in the government’s district officer, the deputy commissioner (DC). The DC needs to refer to her/his superiors in Chittagong and Dhaka only for land grants for areas over 25 acres (10.2 ha). In accordance with the 1997 Accord, this authority will now be subject to the consent of the HDCs, although this authority is yet to be devolved to them. Table 11 shows the different types of land grants together with the identity of the present land granting authority.

¹⁰ Several villages form a ‘mauza’, which is in charge of a headman (there are more than 350 in the CHT). Apart from supervising the work of the karbaries, the village heads, the headman is responsible for law and order, natural resource management, revenue collection, and advising the deputy commissioner (the government’s district officer) in land and revenue matters. Above the mauzas are the ‘circles’ under the chiefs or rajas, of which there are three in the CHT. Apart from their administrative and judicial functions, the rajas formally act as advisers to the deputy commissioners, the hill district councils, the CHT Development Board, and the Ministry of CHT Affairs.

Table 11: Categories of Settlements and Leases

Use of Land	Identity of Lessee	Nature of Grant	Granting Authority	Amount (in Acres)
Homesland (rural)	Hill people	Freehold	Headman	0.30 acres (0.13 ha)
Homesland (rural)	Any person	Leasehold	D.C.	Unspecified
Homesland (urban)	Any person	Leasehold	D.C.	Up to 0.30 acre (0.13 ha)
Plough cultivation	CHT residents	Freehold	D.C.	Up to 5 acres (2.25 ha)
Orchard plantation	CHT residents	Freehold	D.C.	Up to 10 acres (4.5 ha)
Commercial plantation	Any person	Leasehold	D.C.	Up to 25 acres (11.25 ha)
Commercial plantation	Any person	Leasehold	Commissioner	Up to 50 acres (22.5 ha)
Commercial plantation	Any person	Leasehold	Government	Above 100 acres (40.5 ha)
Industries	Any person	Leasehold	D.C.	5-10 acres (2.25-4.5 ha)

Source: Roy (2000)

Ever since the British period, land grants have usually been made only in consultation with the headmen of the territorial and revenue units known as mauzas. This was deviated from after the independence of Bangladesh in 1971, as will be discussed in more detail below. The mauza headmen are the real pivots of the land and revenue system in the CHT. They are formally government appointees, but their primary loyalty seems to lie more with the circle chiefs or rajas, on whose nomination they are usually appointed, and to their clans and other village constituents (Roy 2000b, p 48).

Administration of Forests

The largest of the RFs in the CHT date back to the British period (1860-1947). These include the Kassalong, the Reingkyong, the Matamuhri, and the Sangu. All these areas are inhabited. The other RFs are far smaller. They are scattered about the CHT and have been largely denuded of their once luxuriant cover, especially since they were converted into plantations of commercially valuable species such as teak. An ADB-funded study in 1976 (Webb and Roberts 1976) recommended that these small RFs be decategorised as forests since they are difficult to protect, being virtually islands of forest in the midst of settled agricultural zones. Foresters, however, did just the opposite in the 1990s by creating new RFs of varying sizes, some barely going beyond a few thousand square metres.

In contrast to the areas outside the reserves, the administration of RF areas has remained virtually unchanged since they were declared as forests during British rule, a process which started in the 1870s. The main difference is that the population of these areas has risen greatly over the last century-and-a-half. The inhabitants of the RFs are subject to the jurisdiction of the ordinary criminal courts and the civil jurisdiction of the government and indigenous courts, but the land and revenue laws

applicable to the rest of the region do not ordinarily apply here. These areas are administered by the BFD to the exclusion of any other authority. No land rights are recognised within them except whatever licensed usufructs are conceded from time to time through the notifications and orders of the Forest Department or the Forest Ministry. The only such concession in practice has been a limited extent of jhum or swidden cultivation. This too is sparingly granted, and in most instances farmers indulge in this age-old practice as surreptitiously as they can, which is no easy feat given that jhum cultivation involves clearing jungle and setting fire to the cut and dried vegetation. The government has not seen fit to recognise any rights of RF residents through formal grants (including leasehold rights) such as were granted to Khasi villagers in Sylhet division in accordance with Section 28 of the Forest Act of 1927. The latter practice, too, was discontinued 'during the rule of President Ershad' in the 1980s.¹¹

¹¹ Interview with Khasi village headman in Maulvibazar district, Sylhet, June 2001



Raja Devasish Roy

Reinghyong Reserved Forest