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# conflicts over land

The last two centuries saw three major events that adversely affected the land rights of the people of the CHT. The first of these occurred in the 1870s with the declaration of former swidden and forest commons as RF. The next was the construction of a hydroelectric dam at Kaptai in 1960 that submerged the town of Rangamati and displaced almost 100,000 people, i.e., about one-third of the population of the region, and permanently inundated 54,000 acres of the choicest paddy lands (Ishaq 1975, p 126). Between 10,000 and 40,000 un-rehabilitated Chakmas permanently migrated to India, and remain in the north-eastern state of Arunachal Pradesh as stateless refugees (Bhaumik et al. 1997, pp 140-149). Compensation payments and alternative grants of lands were grossly inadequate, and many believe that the political unrest of the 1970s was at least partly a result of dissatisfaction with the havoc caused by the dam. (Sopher 1964; Chakma 1995). The last event was the population transfer programme of the 1980s that displaced about the same number of people (Roy 1998). The population transfer programme, however, involved violent incidents. A discussion of the human rights dimensions of these changes is outside the scope of this paper.<sup>12</sup> However, it should be noted that the aforesaid processes led to violent disruptions in the social and cultural integrity of the indigenous peoples. Tens of thousands of indigenous people were evicted from their homes and lands, and many of these areas are now occupied by Bengali settlers. The original inhabitants of these areas are now internally displaced within the CHT, especially in remoter forest and hill areas, including in the reserved forests. These displaced people are not only eking out a sub-human existence in their makeshift settlements, but causing huge pressure on existing natural resources, including common swidden lands, natural forests, and plantations raised by the Forest Department. This is leading to much tension between the earlier inhabitants of such areas and the internally displaced people. Moreover, the tension between these displaced people and the settlers is still strongly felt, and this has severe implications for long-term peace and stability in the region. The combined effects of land dispossession, land scarcity, sudden dependence on the market, and rising deforestation caused untold hardships to different communities, and especially for women. Women not only play a leading role in resource management, but carry the main responsibility for fetching firewood and water. With decreased access to land and forest, women had to go farther and farther to fetch these necessities (Roy 2000c, p 108). The situation has not improved in recent years, although state-sponsored in-migration has since been halted.

<sup>12</sup> The nature of these conflicts has been documented in Roy 2000e. See also, CHT Commission, 1990.

Two other likely developments may have a negative impact on the local people in the near future. One of these is the expansion of the area designated as RF, and the other is mining activities for natural gas and oil. The actual and likely impact of these developments on the land rights of the people concerned is discussed below. It may be noted that the Kaptai Dam affected both indigenous people and ethnic Bengali residents. Similarly, the creation of the new reserves will also affect a significant number of long-time, Bengali-speaking CHT residents, especially evacuees of the Kaptai Dam. However, in both cases, the vast majority of the affected people will be indigenous peoples.

### **The Old Reserved Forests**

It is not only the non-recognition of land rights which undermines the rights and needs of inhabitants of the RFs. In other ways too they are deprived of their rights and needs as ordinary citizens. The health situation within the RFs and the lack of any access to education and other extension services that are taken for granted in other areas is a further cause for concern (Roy and Gain 1999). There are no government-run or state-subsidised schools within these areas, because in order for the government to take over the administration of a school or to provide subsidies the school premises need to be recorded in the name of the school, which the BFD has refused to allow. Inhabitants of RFs may elect their representatives to local government bodies, but the limited funds allocated to the local councils are seldom enough to make any serious impact on the development and welfare needs of the community. On the other hand, the absence of tenured security precludes the RF residents from taking up long-term cultivation, plantation, and commercial ventures based on land use.

The BFD appoints a number of 'headmen' in selected hamlets. Originally, these headmen were nominated by the people themselves and their appointments were formalised by the BFD. The BFD has tried to manipulate the system of appointment to its own advantage, but it is not easy nowadays to have a headman appointed without the consent of the people concerned, as RF inhabitants are more politically conscious about their rights.<sup>13</sup> Although the headmen act as spokespersons for their people and liaise with the BFD, they are not part of either the traditional structure of the mauza headmen and karbaries or of the modern elective council (the Khasi village headmen known as 'Myntri' may be considered an exception). These BFD-appointed headmen are therefore seldom in a position to be able to defend the rights of the people in an effective manner, as the basis of their office is dependent upon the goodwill of the FDOs.

Formally, the RFs are 'owned' by the Forest Department, but the inhabitants of this land and the surrounding areas, who are almost exclusively indigenous people, have seldom acknowledged this. To people not traditionally used to a concept of private ownership of land it has meant little, especially since they know that their ancestors cultivated the land long before the arrival of the foresters. This may at least partly explain why indigenous people have felt free to migrate in and out of these areas at will. On two occasions in history, military intervention was sought to contain migration into the forests. The first time was at the beginning of the 20<sup>th</sup> century in the

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<sup>13</sup> This information was provided to the writer by inhabitants of RFs in Sylhet and the CHT in June 2001.

then Maini RF, when British soldiers were almost brought in to evict the so-called encroachers. This was averted through the intervention of the Chakma Chief, and eventually the area – which contains vast areas of lowlands suitable for plough agriculture – was de-reserved. It now forms part of Dighinala sub-district of Khagrachari district within the Chakma Chief's administrative circle. In 1971, paramilitary troops of the East Pakistan Rifles (EPR) were actually brought into the Reingkyong RF to evict new migrants. Bloodshed, however, was averted when local leaders mounted vocal protests.<sup>14</sup> Since then, organised military force has not been used to protect the RFs, but BFD guards have been known on occasion to resort to armed action (Roy and Gain 1999, p22). It is clear that indigenous communities and the Forest Department have conflicting views over the rights to these areas, as will be discussed in more detail below.

Although the number of settlements in the RFs was negligible during the British period (1860-1947), they started to increase with the general growth of the CHT population. The population of the Reingkyong reserve grew because of migration by unrehabilitated evacuees from the Kaptai Dam reservoir area in the 1960s (Webb and Roberts 1976). A large number of indigenous people displaced by the recent internal conflict have also taken shelter in the Kassalong reserve. Similarly, the southern Matamuhri and Sangu reserves have also taken their share of overflow from the other areas, which themselves are now over-populated due to the influx of ethnic Bengali transmigrants from the plains. Recently, the Forest Department sought the cooperation of local leaders to stop swidden cultivation entirely in the RFs. The leaders, however, are known to have advised the department to overlook the matter on humanitarian grounds.<sup>15</sup> In the meantime, swiddeners in the northern Kassalong RF feared arrest and criminal prosecution since a list of cultivators had reportedly been handed over by the Bangladesh Army to the Forest Department.<sup>16</sup>

Technically, the Forest Act forbids most forms of land use within an RF unless specifically allowed by FDOs. The best example is the raising of tree plantations through the 'taungya' method that necessarily involves swidden or jhum cultivation. However, jhum cultivation not involving taungya could, and did, lead to prosecutions in many cases, depending upon the discretion of the FDO concerned. Similarly, criminal prosecutions were also initiated in places where there were large-scale incidents of theft and illegal logging from the RFs. That does not, mean, however, that the actual offenders were being prosecuted. It merely suggests that prosecutions took place, and in the vast majority of cases, it was the innocent inhabitants of adjacent areas who were prosecuted by having their names picked at random from electoral registers.<sup>17</sup> This has become the customary practice as it seems to be the only way in which FDOs can demonstrate the efficacy of their forest protection efforts (Roy and

<sup>14</sup> The leaders included the Chakma Chief, Raja Tridiv Roy and Manobendra Narayan Larma, who were elected to the national and provincial legislatures respectively. Roy went into exile in 1971 and took office in the Government of Pakistan. Larma later led the armed struggle for autonomy until he died in an intra-party conflict in 1985.

<sup>15</sup> Meeting of Forest Department officials, the district administration, the local MP, and other local leaders in May 2001 at which the author was present.

<sup>16</sup> This information was provided to the author by a leader of the Tribal Tree Planter's Association based in Rangamati, June 2001.

<sup>17</sup> *Taungya Newsletter*, November 1998, No. 1, Issue 1.



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Usui (Tripura) villagers in the Reingkyhong Reserved Forest

Gain 1999, p22). Sometimes, six or seven different cases are filed against a single person, who is obliged to attend each and every hearing. In desperation, many of the accused have stopped attending hearings, as they cannot afford the cost of travel to the district headquarters and the legal fees. Now many are fugitives from justice, on the lookout for police and forest officials on market day, lest they be arrested and imprisoned. It is not surprising, therefore, that the inhabitants of many RFs seek to have these areas 'de-reserved', a demand strongly opposed by forest administrators. This also explains why CHT people are so vehemently opposed to the expansion of the RF areas.

### **The New Reserves**

Given the above scenario, one might have expected the government to revise its forest management policy for the CHT. In fact, after surveying the situation in 1976, some expatriate forestry experts (Webb and Roberts 1976) expressly recommended that the smaller RFs be de-reserved and handed over for settlement and permanent cultivation. That, however, was not to be. Contrary to popular expectation and the aforesaid recommendations, the government chose to follow the advice of its senior foresters by initiating the creation of hundreds of small, new RFs all over the CHT. This was heralded by a series of gazetted notifications from the MOEF, most of which were published in 1992. The total area involved is approximately 89,034 ha. About half of this has already been declared to be RF through notifications issued in June 1996 and in April and May of 1998. Although this process has the seemingly laudable aim of enhancing the region's forest cover, it also has severe implications in terms of the basic land rights and other human rights of the people living there. The land affected includes small farmers' registered holdings, homesteads, farm land in the process of being registered, and forest and grazing commons held in accordance

with customary law. Ironically, the land to be made into RF covers almost the whole area in which swidden cultivators were rehabilitated by the Forest Department's Jhum Control Division in the 1960s in order to raise fruit orchards, the title to which was due to be transferred to the planters (Ishaq 1975, p99; Sattar 1995, pp10-12). When the project failed, in the opinion of many as a result of the Forest Department's inefficient management, the government unilaterally raised pulpwood plantations and re-categorised the land as PF.

The ownership of PF land is vested in the district collectorate under the deputy commissioners, but unlike RFs, people may enter the PF without the Forest Department's permission although some species of trees are protected under sanction of imprisonment. PFs are generally regarded by foresters as an intermediate category of forest awaiting up-gradation to RF, when their total administration and ownership becomes vested in the Forest Department. Thus, while virtually no form of resource use is permitted within RFs without the express consent of the Forest Department, any manner of resource use is permitted within PFs, unless expressly prohibited. In the CHT, there is a moratorium on many species of trees within PFs, and violators are liable to criminal prosecution. A large part of these PFs has already been formally re-categorised as RF, although the actual demarcation of this land by the district collectorates has reportedly not yet concluded.

A delegation of hill leaders met the Minister for Environment and Forests in August 1998 and demanded that the notification on the creation of new RFs be revoked. Since then, a committee has been formed with members from all three districts to peacefully resist the reservation process. The Committee for the Protection of Forest and Land Rights in the CHT declared in 1998 that it would start an agitation movement if the concerned notifications were not revoked. Subsequently, the minister promised to revoke the order, but reports indicate that the process to gazette and register the order is proceeding and FDOs are preparing to start plantation programmes in these areas (Roy 2000e, p 179). Another delegation of hill leaders met the new minister in autumn 2001 and received assurances that the problem would be redressed, but nothing of substance has been done so far (June 2002) to allay the fears of the people in the affected areas.<sup>18</sup> The uncertainty continues.

### **Displacement and Dispossession by the 1980s Population Transfer Programme**

In 1979, the Government of Bangladesh initiated a new measure to combat the rising insurgency in the region through a population transfer programme. An estimated 200,000 to 450,000 Bengali-speaking people from various parts of Bangladesh were re-settled within the three hill districts.<sup>19</sup> The relevant land law, Rule 34(1) of the CHT Regulations, was amended to facilitate land grants to non-residents, among other things. This process continued for three to four years. In conjunction with anti-insurgency military operations, the resettlement process led directly or indirectly to the dislocation of tens of thousands of indigenous people. Some took refuge across the international border in India and others fled to the remoter hill and forest areas. The international refugees have since returned to the country, but according to

<sup>18</sup> The writer was a member of this delegation.

<sup>19</sup> Estimates of the number of settlers vary a great deal. The lower number is cited as "more than 200,000" in Chakma (1993) A higher number is cited in the Preface of Chittagong Hill Tracts Commission, (2000)



Usui (Tripura) woman and child

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refugee leaders, a significant number of them have not been rehabilitated in their original homesteads (Roy 2000e, p 174). Similarly, tens of thousands of internally displaced people (IDPs) still continue to survive in make-shift settlements, including those in the northern Kassalong RF (Roy 2000e, p 177), where many suffer from malnutrition and disease of near-epidemic proportions. Two specific measures of the 1997 Accord have direct relevance for the IDPs. One of these is the task force that has been established by the government to rehabilitate the IDPs and the international refugees. The other measure is a commission on land which is expected to provide expeditious remedies for land dispossession and other cases of land disputes.

The task force was originally headed by the then MP from Rangamati district. A list of displaced people was compiled, but little has been done to either rehabilitate them or to look after their livelihood, health, and education needs. Disputes over whether ethnic Bengali settlers fall within the definition of IDPs as laid down by the Accord has further complicated the matter (Roy 2000e, p 176). The newly elected BNP-headed government has not appointed a new head of the task force, and it is not known what it intends to do about the matter. The formation of a Commission on Land has also been declared to resolve land-related disputes in accordance with “local laws, usages and practices,” but as of June 2002, it has yet to begin to function. A law was passed in 2001 by the previous Awami League government to establish the commission and give it the requisite powers, but it was rejected by the CHT Regional Council because the law vested unfettered powers in the chairman, whose decision would be final if the other members could not forge a consensus.<sup>20</sup> When it was in opposition, the BNP declared that the 1997 Accord had made too many concessions to the hill people. Its stand on the Accord has reportedly mellowed a

<sup>20</sup> Interviews with J. B. Larma, Chairman, CHT Regional Council, 2000 and 2001

great deal, but its exact attitude regarding the various major issues, including land, has not been made public. This is causing much uncertainty among the affected people.

### **Industrial Leases**

Another development of recent times that has led to the displacement of indigenous people is the granting of long-term leases of land to influential non-resident individuals and companies based in cities outside the CHT for commercial and industrial ventures. Most of these leases were granted in Bandarban district and, to a lesser extent, in Khagrachari and Rangamati districts, particularly in the 1980s. The land in question was hitherto used as swidden and forest commons by indigenous people. Some of them still occupy the land, since those leasing the land have never bothered to visit, while others have been pressured to vacate their land or to stay away. Although much of the land has been mortgaged to financial institutions to raise loans, very little has actually been used for raising plantations or for other ventures as agreed upon in the lease deed. The problem remains unresolved.

### **Mining for Gas and Oil**

In the 1980s, the first seismic survey of the CHT was conducted by Shell but was discontinued due to the insurgency in the region. Surveys were resumed in the 1990s by the US-registered company United Meridien Ltd., which was later merged with another US company called UNOCAL. Under general Bangladeshi law, sub-soil rights are reserved for the state alone, although the Hill District (Local Government) Council Acts of 1989 (as amended) state that the concerned HDC is entitled to a share of royalties from mineral extraction. There seems to be no other understanding beyond this, either with the government, or with the mining company.

It has been said that UNOCAL's interests in the CHT have recently been bought by a Saudi Arabian sheikh who intends to start drilling for gas in the near future. It seems, however, that no understanding has been reached with the CHT leaders regarding revenue sharing or with regard to the mode of extraction; the likely impact on inhabitants of drilling sites and gas-line areas; the question of dislocation, rehabilitation, compensation; and so forth. The section of the CHT population that will be most vulnerable to any negative impacts resulting from the drilling process is likely to be the swidden (jhum) cultivators. Since swidden cultivators are not usually in possession of registered title deeds to their jhum land, they may well not receive any monetary compensation for damage. Secondly, since natural gas (and oil) is a highly combustible matter, swidden cultivation may well be banned or severely restricted, as the manner of cultivation involves setting fire to dried vegetation. The risk of permanent eviction from drilling and pipeline sites cannot be ruled out. The impact of mining on the local environment is another important matter that may adversely affect local people. If these matters are not negotiated in an equitable manner, mining could lead to further dislocation and unrest and undo whatever positive gains have been achieved by the 1997 Accord. Given the non-transparent manner in which many mining companies operate, and the unsympathetic attitude of most governments, it will be a daunting task for the CHT people and their councils to negotiate effectively with either the government or the mining company.

Mining by foreign companies is still a controversial issue at the national level, because of both cost factors and the more important issue of how far these resources ought to be retained for local consumption. Recent newspaper reports suggest that the new government is thinking about keeping the matter in abeyance in view of public opinion on the matter.<sup>21</sup> This may actually be a positive development for the CHT as it allows the people of the region time to prepare for negotiations to avoid human rights violations and possible environmental damage.



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Degraded hill forest

<sup>21</sup> The *Daily Star*, Dhaka, 9, 10, 11 February 2002.