

**THE ILO CONVENTION ON INDIGENOUS AND TRIBAL POPULATIONS, 1957 AND
THE LAWS OF BANGLADESH: A COMPARATIVE REVIEW**

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This study has been conducted at the request of the ILO Office, Dhaka, and the Project to Promote ILO Policy on Indigenous and Tribal Peoples, to help facilitate the ongoing dialogue between the ILO & the Government of Bangladesh regarding the implementation of the ILO Convention No. 107. The views expressed herein are those of the author, and not those of the ILO Office.

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GLOSSARY

Adivasi	Indigenous/Aboriginal (Bengali/Hindi)
Chief or raja	Also 'Circle Chief'. Administrative head of a Circle responsible for the administration of "tribal" justice and customary laws of the hill people, for revenue administration and for advising the Deputy Commissioners, the Hill District Councils, the Chittagong Hill Tracts Development Board and the Ministry of Chittagong Hill Tracts Affairs. There are three circles in the CHT.
CEACR	Committee of Experts on the Application of Conventions and Recommendations. Monitors the application of ILO Convention No. 107 & other ILO conventions and recommendations.
CHT	Widely used acronym for 'Chittagong Hill Tracts'. Formerly, one administrative district, now includes the three 'hill' districts: Rangamati Hill Tracts, Bandarban Hill Tracts and Khagrachari Hill Tracts. Should be distinguished from Chittagong, which is the name of a neighbouring district, and the name of an administrative division of which both Chittagong district and the hill districts are a part of. Chittagong is also the name of the second largest city of Bangladesh and the headquarters of Chittagong district and Chittagong division.
CHTRC	Premier CHT council supervising CHT administration. Responsible to Ministry of CHT Affairs.
GOB	Government of Bangladesh
Headman	Sub-chief. Also 'mauza headman'. Head of a mauza. The headmen (including a few women) are charged with revenue, land and "tribal" justice administration at the mauza level. The headman supervises the work of the karbaries (village chiefs or elders), of which there may be an average of five to fifteen in each mauza. The headman is responsible to the Circle Chief and the Deputy Commissioner, and to the Hill District Councils.
HDC	Hill District Council
Hill People/Pahari	Indigenous people of CHT
JSS	<i>Jana Samhati Samiti</i> , largest political party of the CHT people that led the movement for autonomy in the CHT.
Jum	Local name for swidden cultivation, also used in Northeast India. Also referred to as "shifting", "rotational" or "slash-and-burn" agriculture. Rainfed cultivation that involves burning of vegetation and planting of mixed seeds without hoeing or ploughing.
Karbari	Village chief or elder, an office that is largely hereditary. Traditionally nominated by the villagers and formally appointed by the chiefs.
Mauza	A mauza is composed of several villages. In the CHT, it is both a revenue and land administration unit <i>and</i> a unit of general and "tribal" judicial administration. The total number of mauzas in the CHT is more than 350.

Plains regions

Generic name to refer to the rest of Bangladesh in comparison to the CHT. However, some parts of the "plains" also include hills, such as in Sylhet division, Chittagong district, greater Mymensingh area, and the *Barind* tracts of Rajshahi division.

UPDF

United People's Democratic Front, a political party of indigenous people in the CHT, led by founding leader, Proshit Bikash Khisa.

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THE ILO CONVENTION ON INDIGENOUS AND TRIBAL POPULATIONS, 1957 AND THE LAWS OF BANGLADESH: A COMPARATIVE REVIEW

Raja Devasish Roy¹

I. INTRODUCTION

1.1. The Convention No. 107 & Convention No. 169

The ILO Convention on Indigenous and Tribal Populations of 1957 (Convention No. 107), and its accompanying Recommendation No. 104, were adopted in 1957.² Described as a 'seminal instrument', the convention is regarded as having "remained unique in international law as the only comprehensive international statement of the rights of indigenous and tribal populations and of the duties of states toward them from 1957 until 1989".³ Convention No. 107 covers a wide range of issues, including land, recruitment and conditions of employment, vocational training, handicrafts and rural industries, social security and health, administration, education and means of communication. Reflecting the 'mainstream' ideas of the time, the Convention sought to provide basic safeguard measures for indigenous and tribal population groups.

In 1989, ILO Convention No. 107 was revised and the more progressive ILO Convention on Indigenous and Tribal Peoples of 1989 (Convention No. 169) was adopted. The latter was adopted in order to incorporate current perspectives on the protection of the rights of indigenous peoples. It dismissed the 'integrationist approach' of Convention 107, recognising instead the right of indigenous and tribal people to exist as a distinct "peoples", should they wish to do so. This paradigm shift was the result of several developments, especially since the 1980s. These include the increasing awareness and mobilization among indigenous peoples and NGOs, the conclusion of a study on discrimination against indigenous populations by United Nations Special Rapporteur Jose R. Martinez Cobo in 1986, increasing international acknowledgment of the need to end such discrimination and facilitate the equal application of universal human rights standards to indigenous peoples, and the beginning of a drafting process of a global declaration on indigenous peoples' rights, in 1984.⁴ Since 1989, further ratifications of Convention No. 107 are no longer open, but it continues to be valid for those countries that have ratified it, and have chosen not to ratify the later convention of 1989. By 1989, nineteen countries had ratified ILO Convention No. 107, while twenty countries have ratified Convention No. 169, including only two countries in the Asia-Pacific region, Fiji and Nepal.⁵

1.2. Background to Ratification of Convention No. 107

The ILO Convention No. 107 was ratified by Bangladesh in 1972, a year after it gained independence from Pakistan.⁶ However, as a part of former Pakistan, the convention had applied to Bangladesh even prior to

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² International Labour Conference, Record of Proceedings, 39th Session (Geneva 1956) and International Labour Conference, Record of Proceedings, 40th Session (Geneva 1957), cited in Swebston (1990: 680). Another potential ILO Convention of relevance for indigenous peoples is Convention No. 111 concerning discrimination in employment. Many of the convention's provisions are compatible with Article 29 of the Constitution of Bangladesh.

³ Swebston (1990: 682).

⁴ Roy & Kaye (2002: 21). The Declaration on the Rights of Indigenous Peoples was finally adopted in 2007, nearly twenty-five years after the process of drafting started.

⁵ The countries that have ratified ILO Convention No. 107 are: Angola, Bangladesh, Belgium, Brazil, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Portugal, Syria and Tunisia. The countries that have ratified ILO Convention No. 169 are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Norway, Paraguay, Peru and Venezuela.

independence. Pakistan – a signatory to the Convention - had ratified the instrument in 1960.⁷ However, apart from the periodical observations of the ILO's Committee of Experts – upon which body is vested the responsibility of monitoring the implementation of the ILO conventions - and a number of ILO mission visits to Bangladesh, direct dialogues and contact between the ILO and the Government and indigenous people of Bangladesh have been quite limited, including at the country level.⁸

1.3. 'Indigenous', 'Tribal' and 'Semi-Tribal' under Convention No. 107

There is no universally accepted definition of the terms 'indigenous' and 'tribal'. The ILO Convention No. 107 contains some criteria – both subjective and objective – to help identify indigenous and tribal populations, but these are not meant to serve as a formal definition of the aforesaid terms. With regard to tribal populations, the criteria include the populations' relative disadvantage with regard to social and economic indicators, and the regulation of their status by customary regimes or special laws or regulations.⁹ With regard to indigenous populations, the criteria include their pattern of living, which is regulated more by social, economic and cultural institutions of historical ancestral groups that they have inherited, than by the contemporary institutions of the dominant peoples and communities of their country.¹⁰ The main features of semi-tribal populations include their relatively fast integration with the national community through the gradual loss of their "tribal characteristics", in comparison with the tribal and indigenous populations, but falling short of full integration.¹¹

ILO Convention No. 107

Article 1.

1. This convention applies to:

(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in

⁶ Ratified on 22 June, 1972, about six months before the adoption of the Constitution of Bangladesh.

⁷ Ratified on 15 February, 1960.

⁸ The CEACR's Observation of 1991 (61st session) mentions the visit to Bangladesh of representatives of the Director-General of the ILO and their discussions with Bangladesh government officials, and discussions between Government representatives with the Conference Committee. Dissatisfaction had been expressed at a number of meetings at what was considered to be inadequate participation of the ILO's country office in collaborative developmental efforts and dialogues concerning the indigenous people, including at a *National Consultation on ILO Convention No. 107 and Indigenous Peoples' Issues*, organized by the Bangladesh Indigenous Peoples Forum in association with the ILO Office, Bangladesh, in Dhaka, on 20 June, 2006 and at a *Regional Training for Professional Staff on Indigenous and Tribal People in Asia*, organized by the Asia Indigenous Peoples Pact (AIPP), the International Labour Organization (ILO) and the International Work Group for Indigenous Affairs (IWGIA) in Chiangmai, Thailand, on 26-30 June, 2006. In June 2006, a mission from the ILO office, including from the *Project to Promote ILO Policy on Indigenous and Tribal Peoples* based in Geneva and New Delhi, visited various parts of Bangladesh and met indigenous leaders and government officials. The team included Birgitte Feiring, Coen Compier and Sarah Webster. This was followed by training workshops on the ILO Convention No. 107 and Indigenous Peoples in Sylhet on 26 October, 2008 (attended by Coen Compier and Sarah Webster), and in Mymensingh on 28 October, 2008.

⁹ Article 1(1), ILO Convention No. 107.

¹⁰ Article 1(1), ILO Convention No. 107.

¹¹ "[T]he term *semi-tribal* includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community"; Article 1(2), ILO Convention No. 107. This concept is of relative unimportance in the current context. See further, chapter 1.5, supra.

conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

2. For the purposes of this Convention, the term *semi-tribal* includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.

Two, among other, important features of the aforesaid criteria may be noted. First, that although the Convention refers to three types of population groups, and provides different criteria to help identify them, when it comes to the application of its provisions to the aforesaid three groups, the Convention does not distinguish between them. In other words, *the provisions of the Convention apply equally to members of all three groups – indigenous, tribal and semi-tribal – without any distinction*. Second, while the aforesaid criteria have, on the whole, proved to be useful in identifying indigenous and tribal population groups, they carry a number of underlying assumptions and implications that are disrespectful towards the people concerned, and are also out of step with the progressive development of international human rights law, and the realities of contemporary indigenous society. In his report on *Discrimination against Indigenous People*, UN Special Rapporteur Martinez Cobo provides several criteria to identify indigenous peoples, and these have gained increasing respect among indigenous peoples and human rights scholars. Cobo highlights continuity with pre-invasion and pre-colonial societies, the concerned groups' membership of non-dominant sectors of society, their ethnic identity, close ties to their ancestral territories and the continuation of their social institutions and legal systems, among other things.¹² A formal definition of the term has never been provided, including in the *UN Declaration on the Rights of Indigenous Peoples*, since such definitions are feared to lead to the exclusion of legitimate groups, rather than actually help identify them. The *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*,¹³ for example, also does not include a formal definition of minorities.¹⁴ Although indigenous peoples and minorities groups share some common experiences, the former do not wish to be considered as minorities because "the historical, traditional and cultural circumstances of indigenous peoples are different to that of minorities".¹⁵

ILO Convention No. 169

Article 1

1. This Convention applies to:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

¹² "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems." Cobo (1986: para 379).

¹³ The Declaration was adopted by the UN General Assembly on 13 September, 2007 by a vote of 143 in favour, four against, and eleven abstentions.

¹⁴ At the UN Commission on Human Rights' Intersessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples (whose last seven or eight sessions were attended by this author), indigenous participants have time and again declared that providing a formal definition of indigenous peoples could itself amount to a discriminatory act. This would also be contrary to the criterion of self-identification, as contained in Article 1(1)(2), ILO Convention No. 169.

¹⁵ Henriksen (2004) in Drong (2005:109).

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Jose Martinez Cobo,
UN Special Rapporteur

Study of the Problem of Discrimination against Indigenous Populations

UN Document; E/CN.4/Sub.2/1986/7/Add.4, para 379.

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

1.4. Populations and Peoples under Conventions No. 107 & 169

In a general sense, there are, of course, extremely important differences, legal, political, and otherwise, between the meaning of the terms ‘populations’ and ‘peoples’. For the purposes of the two above-named ILO conventions (107 and 169), however, these distinctions are of relative unimportance on account of the qualified use of the term ‘peoples’ in the 1989 Convention. Article 1(3) of the Convention (No. 169) reads; “The use of the term “peoples” in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law”. This qualification was not acceptable to many indigenous people that were involved in the drafting process, but the qualified reference remains in the Convention.¹⁶ The *Declaration on the Rights of Indigenous Peoples* uses the term peoples without any qualification. Therefore, the use of the term ‘peoples’ is in conformity with current progressive thinking on the subject.

1.5. The Integrationist Emphasis of Convention No. 107 and Current Discourses on Integration

Among the reasons behind the revision of Convention No. 107 were its integrationist approach and patronizing attitudes.¹⁷ The convention “presumes that [indigenous and tribal peoples] will disappear as separate groups once they have the opportunity to participate fully in the national society, and it attempts to ease the transitional period”.¹⁸ However, in the later and more progressive ILO Convention No 169, the reference to such phrases as “less advanced stage” has been dropped, as was the reference to “semi-tribal” groups.¹⁹ Moreover, the criterion of self-identification, another important tool for identification, has been added.²⁰ It is no longer regarded that the loss of “tribal characteristics” by the peoples and population groups concerned is either inevitable, or desirable, as was assumed by the drafters of the Convention in 1957. In fact, more and more population groups the world over are increasingly asserting their identity as indigenous peoples, having suffered through, and survived, some of the worst forms of discrimination and colonization known to humankind.²¹ Again, in line with current development

¹⁶ Roy & Kaye (2002: 21).

¹⁷ Swebston (1990: 682). See also, Roy and Kaye (2002: 19).

¹⁸ Swebston (1990: 682).

¹⁹ Swebston (1990: 682)

²⁰ Swebston (1990: 682)

thinking of that time, which assumed that decisions regarding development were the concern of the State rather than of the people most affected, the drafters of Convention No. 107 are not known to have either consulted indigenous peoples about the provisions of the Convention, or sought their informed consent prior to its adoption. In contrast, the drafting of Convention No. 169 did involve a number of indigenous leaders and experts, although it too is regarded as falling below the minimum standards for indigenous peoples, for example, in comparison to the *Declaration on the Rights of Indigenous Peoples*.²² However, equally importantly, the contents of Convention No. 169 also reflect the paradigm shift in the international developmental and human rights contexts, which have increasingly acknowledged that the views of indigenous peoples regarding their rights and welfare not only needed to be accounted for in the development process, but that these peoples have the right to be a substantive part of all relevant decision-making processes. Such progressive views have been manifested in the work of several international human rights mechanisms, including the UN treaty-monitoring bodies, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the Office of the UN High Commissioner for Human Rights, the former UN Commission on Human Rights and its then subsidiary body, the UN Working Group on Indigenous Populations.²³ Similar views are also reflected in the policies of international lending or financial institutions (multilateral development banks) and bilateral development agencies, including the World Bank and Danida (one of the development agencies of the Government of Denmark). Lastly, but not the least, some very progressive and landmark shifts in legal thinking can be seen in such studies as that of UN Special Rapporteur Martinez Cobo mentioned above, and most importantly, in this case, in the deliberations at International Labour Conferences under the auspices of the ILO.

A handbook on the ILO and Minorities and Indigenous Peoples, published in 2002 by the Minority Rights Group International, states the following: "At the time of its adoption the approach towards indigenous peoples was paternalistic, with integration being a major aim..... The ILO no longer takes this approach, and integration is not an issue of concern or of interest to the supervisory bodies."²⁴ On account of the above directional changes, including the views of the ILO's supervisory bodies, it is incumbent upon all who are concerned with the implementation of Convention No. 107 to re-interpret many of its provisions in tune with current and progressive discourses, both on moral, and practical, grounds.

II. THE INDIGENOUS PEOPLES OF BANGLADESH

2.1. 'Indigenous', 'Hillmen', 'Aboriginal', 'Tribal', 'Adivasi' under Bangladeshi Law & Practice

²¹ Victoria Tauli-Corpuz, chairperson, *UN Permanent Forum on Indigenous Issues*, highlights the tenacious survival of the indigenous peoples against such heavy odds over the centuries and asserts: "We are still around". See Dansk AV Produktion, 2001.

²² Among progressive national legislation that may be regarded as having gone beyond Convention No. 169 are the provisions in the Constitution of India (Articles 371G and 371A) concerning the predominantly indigenous people-inhabited states of Mizoram and Nagaland, and the laws of the Philippines (Section 22, Article II and Section 4, Article XII, Constitution of the Philippines, and the *Indigenous Peoples Rights Act, 1997* or Republic Act 8371). See also, Roy (2005a: 10, 15-18).

²³ The UN Human Right Commission – which used to report to the UN Economic and Social Council - and its subsidiary bodies, including the UN Working Group on Indigenous Populations, do not exist any more. Through a series of reforms in 2006-2007, the Human Rights Commission and its subsidiary bodies were replaced by the Human Rights Council (established through UN General Assembly resolution of 15 March 2006), reporting directly to the UN General Assembly. The council's subsidiary bodies include the Expert Mechanism on the Rights of Indigenous Peoples. This mechanism was created by the Human Rights Council following an [informal meeting](#) on the most appropriate mechanisms to continue the work of the former Working Group on Indigenous Populations. The Mechanism, which is composed of [five experts](#) of indigenous origin, provides thematic expert advice on the rights of indigenous peoples to the Human Rights Council. The thematic expertise focuses mainly on studies and research-based advice and the Mechanism may suggest proposals to the Council for its considerations and approval, within the scope of its work as set out by the Council. The Mechanism held its [first session](#) from 1 to 3 October 2008 at the United Nations Office in Geneva.

²⁴ Roy and Kaye (2002: 19).

The issue of the identity of the indigenous peoples of Bangladesh has led to much debate and controversy, and on occasions has brought indigenous leaders and government officials into sharp disagreement. The aboriginal groups in the Chittagong Hill Tracts (CHT) are generally known as 'Pahari' (meaning hillpeople), or as Jumma (from the common tradition of swidden or 'jum' cultivation). The plains aboriginals, particularly those in the north-western greater Rajshahi region, used to be generally known as *Adivasi*, meaning aboriginal or indigenous. This term had little currency in other parts of Bangladesh until the 1990s. However, ever since 1992, when the *International Year of the Indigenous Peoples* was declared by the United Nations, more and more indigenous peoples, both from the CHT and the plains,²⁵ have started to increasingly refer to themselves as *indigenous* in English, and as *Adivasi* in the national language, Bengali.²⁶

Government perspectives on the issue, however, are varied. The Ministry of Foreign Affairs, for example, has at times preferred the terms 'tribe' and 'tribal' ('upajati' in Bengali) to 'indigenous' and 'adivasi'.²⁷ Non-indigenous functionaries at the district and sub-district levels too were generally seen to prefer the terms "tribe and "tribal;" or their Bengali equivalent, 'upajati', but the term *Adivasi* is being used more widely, especially in the plains districts.²⁸ The legal situation, on the other hand, is quite pluralistic, and reflects, in its totality, the currency of all the terms preferred by government officials and indigenous peoples combined. Recent legislation seems to favour the terms "tribe/tribal".²⁹ A 1995 law – primarily a finance law, but also containing specific references to the exemption of income tax payments by indigenous people in the CHT – uses the term "indigenous hillmen".³⁰ Other laws that were framed in earlier periods, such as the CHT Regulation of 1900 (Regulation I of 1900), use the terms "indigenous tribe" and "indigenous hillmen" interchangeably.³¹ The term "indigenous hillmen" is also echoed in several references to the Finance and Income Tax Acts in the schedule to the 1900 Regulation,³² and in several correspondences of the National Board of Revenue.³³ Furthermore, in a case in the High Court Division of the

²⁵ The parts of Bangladesh outside of the CHT are being referred to as the "plains" region, in contrast to the CHT. It ought to be noted, however, that parts of these "plains" do contain areas, such as in the northwestern *Barind* tract within Rajshahi division, the north-central greater Mymensingh region, in the northeastern Sylhet division, and parts of the southeastern Chittagong and Cox's Bazar districts, contain hilly areas.

²⁶ These leaders include J. B. Larma (president of JSS and chairperson of Bangladesh Adivasi Forum), Promode Mankin, MP (Haluaghat), Bir Bahadur, MP (Bandarban), Dipankar Talukder (former MP, Rangamati) and M. S. Dewan, MP (Rangamati; also Deputy Minister, Ministry of CHT Affairs). See views of M. S. Dewan and that of another Chakma leader, expressing their disagreement with the view of the Ministry of Foreign Affairs to refer to indigenous peoples as "tribes" or "upajati", citing laws and goodwill messages of the present and former prime ministers in favour of their arguments, as published in the *Daily Amar Desh*, Dhaka, 13 May, 2006. See also the editorial of the same paper of 14 May, 2006.

²⁷ See for example, statement of the representative of the Permanent Mission of the Government of Bangladesh to the United Nations at the Fifth Session of the UN Permanent Forum on Indigenous Issues, UN Headquarters, New York, on 26 May, 2006. See also, memo dated 19.04.2006 from the Ministry of Foreign Affairs, advising the Ministry of CHT Affairs to use the term "tribal" ("upajati") but to refrain from using the terms "indigenous" or "adivasi" and Gray (1996).

²⁸ One Md. Humayun Kabir, Deputy Commissioner of Khagrachari Hill Tracts, while distributing copies of a book entitled *Khagrachari 2001-2005*, published by the Khagrachari District Administration, in his enclosing letter [No. 37(37)/2006/Con, dated 08.05.2006] describes various indigenous groups as "intruder tribes". In this book, at page 03, the following occurs: "[The Chakma tribe] speaks ill of establishment, dislikes the mainstream people or the Bengali, even takes arms against them.....".

²⁹ See for example, Chittagong Hill Tracts Regulation (Amendment) Act, 2003 (Act XXXVIII of 2003), and the CHT Regional Council Act, 1998 (Act XII of 1998).

³⁰ The Finance Act, 1995 (Act XII of 1995), paragraph 27.

³¹ CHT Regulation, 1900, especially, rules 4, 6 and 52 (since repealed), and the Schedule to the Regulation, which contains a list of the enactments applicable to the region with qualifiers as to the nature and extent of such application.

³² Examples include, Indian Income Tax Act, 1922, CHT Laws Regulation, 1937 (Bengal Regulation II of 1937), the Indian Finance Act, 1942 (Notification No. 63-S dated 1 March, 1937), the Indian Finance Act, 1939 (Notification No. 5932 E.A., dated 20 May, 1939), the Income Tax Law Amendment Act, 1940 (Notification No. 124 dated 15 June, 1940), etc.

³³ See, for example, (i) Central Board of Revenue, Memo C. No. 5(3)-ST/65 dated, 06.04.1967; (ii) National Board of Revenue Memo C. No. 4(6) Kar-5/77/589 dated, 04.09. 1980 (iii) National Board of Revenue, Memo 4(6)/Kar-5/77/28 dated 10.03.1988; (iv) Board of Revenue Notification No. 8/Income Tax/92 dated 17.10.1992; (v) National Board of Revenue Memo No. 6(57)

Supreme Court of Bangladesh in 2000, the court took cognisance of the fact that the petitioner was an “indigenous hillman” of the CHT.³⁴ In the plains regions, the East Bengal State Acquisition & Tenancy Act, 1950 uses the phrases “aboriginal castes or tribes” to refer to several groups who now identify themselves as indigenous or Adivasi.³⁵ In the National Poverty Reduction Strategy Paper adopted by the Government of Bangladesh in 2005 (“PRSP-I”), the term “Adivasi/ethnic minorities” was used.³⁶ In recent years, this was the first time that Bengali equivalent of indigenous or aboriginal appeared in a formal government document. In the PRSP-II, adopted in October 2008, the terms “indigenous communities” and “indigenous people” were both used.³⁷ In several governmental radio advertisements on non-discriminatory treatment for all ethnic and religious groups in the follow-up to the 2008 parliamentary elections, the word “adivasi” was used, alongside the Bengali equivalent of minorities (“shongkha loghu”). In a proposed amendment to the Union Councils Ordinance, 2008, a provision was sought to be introduced to maintain reserved seats for *Adivasis* in union councils (“union “parishads”) in areas outside the CHT where there was a significant Adivasi population.³⁸ If the amendment had been put into effect, this would have been the first time in recent years that the Bengali equivalent of the terms indigenous and aboriginal was used in a statute.

Regards the terminology used, the private press and media too display divergent attitudes, but on the whole, most tend nowadays to be respectful towards the views of the peoples concerned, and ‘indigenous’ and ‘adivasi’ are generally preferred over ‘tribes’ or ‘tribal’.³⁹ Similarly, more and more prominent figures of Bangladeshi civil society are being seen to use the terms indigenous or Adivasi. For example, a political party leader and now Member of Parliament and government minister, recently wrote; “The diversity of our culture due to the presence of indigenous communities is providing extra vigour to the national fabric of Bangladesh. Moreover, indigenous people are the original inhabitants of our country. So, they have the same right we have over Bangladesh, if not more.”⁴⁰

Throughout this study, wherever the context directly relates so, the author will use the terms ‘indigenous’, ‘tribal’, ‘peoples’, ‘populations’ etc. as they occur in Conventions No. 107 or 169, or in the concerned international or national instrument under reference. However, in general, he will use the term ‘indigenous’ rather than ‘tribe’ or ‘tribal’ for a number of reasons, including those referred to above, to mean all three groups: indigenous, tribal and semi-tribal. Firstly, this is more in conformity with the wishes of the peoples concerned as expressed over the years

Kar-3/94/114 dated 15.12. 1994; and (vi) National Board of Revenue Notification No. 7(Income Tax)/94 as circulated through Memo No. 6(54) Kar-3/94 dated 02.01.1995.

³⁴ *Sampriti Chakma v. Commissioner of Customs & Others*, (5 BLC, AD, 2000, 29)

³⁵ The “aboriginal castes and tribes” referred to in this law (Act XXVIII of 1900) include the following: Santhals, Banais, Bhuiyas, Bhumijies, Dalus, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal Paharias, Sauria Paharias, Maches, Mundas, Oraons and Turis. The term Adivasi is also used in Hindi and in Nepalese and has the same or similar connotations to that in Bengali.

³⁶ *Unlocking the Potential: National Strategy for Accelerated Poverty Reduction*, General Economics Division, Planning Commission, Government of People’s Republic of Bangladesh, October 30, 2005 (hereafter “PRSP”).

³⁷ *Moving Ahead: National Strategy for Accelerated Poverty Reduction II (FY 2009 – FY 11)*, General Economics Division, Planning Commission, Government of the People’s Republic of Bangladesh, October, 2008., pp. 142-146. This Strategy, among others, supports the *implementation* of the UN Declaration on the Rights of Indigenous Peoples and the *ratification* of the ILO Convention No. 169 (p. 145). It also supports the implementation of the unimplemented provisions of the CHT Accord of 1997 (p. 145).

³⁸ This proposed amendment was based upon the recommendations of a Committee instituted by the Ministry of Local Government, Rural Development & Cooperatives and headed by Dr. M. Shoukat Ali, former Secretary, Government of Bangladesh and former Adviser, Caretaker Government of Bangladesh. The committee submitted its report to the government in November, 2007. See www.lged.gov.bd

³⁹ In a seminar held at Biam Centre, Dhaka on 30 June, 2006 to honour the memory of Sidhu, Kanu and other indigenous Santal activists who died during the revolt of 1855, indigenous leaders praised the media for being respectful towards the identity of the indigenous and Adivasi peoples and their wish to be referred to as such. The subject of the seminar was the traditional land rights of indigenous peoples of Bangladesh and it was organized by the *Committee for the Celebrations of the 151st Anniversary of the Santal Rebellion*.

⁴⁰ G. M. Quader, “Indigenous People of Bangladesh”, the *Daily Star*, Dhaka, 17 July, 2008..

in formal declarations and statements.⁴¹ Secondly, the terms 'tribe' and 'tribal' have come to acquire certain pejorative connotations in Bangladesh and elsewhere over the years, being associated with "primitive", "backward" and so forth. Thirdly, there is a firm legal and political basis for using the term 'indigenous', along with the similar term 'aboriginal', since both occur in formal and subsisting Bangladeshi laws. This is also consistent with current discourses in the progressive development of human rights law, including the *UN Declaration on the Rights of Indigenous Peoples*. However, as far as the application of the provisions of this convention is concerned, the issue of formal definition, including how the government chooses to identify or define any or all of the three groups concerned (indigenous, tribal and semi-tribal), is irrelevant. Instead, the aim of Convention No. 107, as is also the case with Convention No. 169, is to address the specific vulnerability and socio-economic situation of the population groups and peoples concerned.

2.2. The Indigenous Peoples

Estimates on the number of indigenous peoples in Bangladesh, and their population, tend to vary a great deal. Without accounting for differences in the way the names of some peoples are spelt, the number of the different peoples has been estimated as twelve,⁴² twenty,⁴³ twenty-eight,⁴⁴ thirty,⁴⁵ forty-five⁴⁶ and forty-six.⁴⁷ The reasons for the different numbers includes the multiple names by which the same group is known by different peoples, the different ways of spelling the names of the groups, the categorization of a sub-group as a separate group itself, and so on.⁴⁸ The differences are particularly sharp for the peoples of the plains, with the number clearly rising in recent years, indicating a conscious decision of some peoples to increasingly identify themselves as indigenous. In recent years, members of tea estate workers – largely descendants of migrant workers of indigenous descent from neighbouring areas of India, who remain among the most socially, economically and politically marginalized sections of Bangladeshi citizens – have also chosen to participate in forums of indigenous peoples. One writer sees this rising tendency towards self-identification as indigenous or Adivasi as a result, among others, of "international ethnic politics", and "efforts of some Hinduized groups to disassociate themselves from the caste system", particularly in the plains districts.⁴⁹ While this may be partly true at best, acute discrimination against plains Adivasis is surely also a major factor behind the denial of Adivasi identity up to the 1990s. The problem in Bangladesh is not so much one of pretenders seeking indigenous status, but more one of denial of identity and rights of genuine indigenous people. Sometimes inter-faith conflicts within the same ethnic group coupled with discriminatory attitudes of district and sub-district government officials has even led to the denial of certificates of Adivasi origin – required for admission into Adivasi/tribal quota seats of certain educational institutions – on account of religious affiliation.⁵⁰

⁴¹ These include the Declaration of the Indigenous Peoples of Bangladesh on the occasion of the International Year of the World's Indigenous People in 1993, the 9-point Demands of the Jatiyo Adivasi Parishad, the *Adivasi Declaration of 1997*, and the *Rangamati Declaration of 1998*.

⁴² Bertocci (1984) in Qureshi (1984: 346, 358).

⁴³ Timm (1991: 14).

⁴⁴ The 1991 Census recognizes twenty-eight 'tribes, see table 1, supra.

⁴⁵ Bleie (2005:13).

⁴⁶ This is the estimate of the *Bangladesh Adivasi Forum* in Drong (2005:58); See also, Bleie (2005:13).

⁴⁷ Maloney, 1984 in Qureshi (1984: 5-52).

⁴⁸ For a fuller discussion on the conflicting numbers and names, see Khaleque, 1998 in Gain (1998: 7-10). See also, Bleie (2005: 11-15).

⁴⁹ Bleie (2005: 13).

⁵⁰ On a number of occasions, including in 2008, Christian Adivasis, including among the Santal, were denied certificates of Adivasi origin by district and sub-district officials on the ground that they were "Christian" and hence not "Adivasi"; Interview of Dr. Sourav Sikder, Associate Professor and Chairperson, Department of Linguistics, University of Dhaka, 23 March, 2009.

The picture in the CHT, in comparison, is much clearer. It is now more or less settled that there are eleven different indigenous peoples, and this has also been reflected in recent legislation.⁵¹ Some groups with very small populations that live mostly around the three district headquarters, who are not part of this list, including the Gurkha, Ahomia (Assamese) and Santal, for example, have also demanded the inclusion of their names as indigenous or tribal, a demand so far denied.⁵² Table 1 in the Annexe shows the different peoples according to different classifications along with estimates of their population as available in the official census of 1991.⁵³ The total indigenous ('tribal') population of Bangladesh was estimated at 1,205,978, out of a total population of 111,455,185, making up 1.08% of the national population. The tribal population of the CHT was 514,805 and the tribal population of the plains was 691,173, respectively, 42.67% and 57.33% of the total tribal population of the country.

2.3. Indigenous People, In-migration & Minoritization

In some parts of the country, such as the CHT, Bengali-speaking people did not permanently reside at all, until British colonization in the 19th century.⁵⁴ As in the case of neighbouring Northeast India, soon after the annexation of the CHT into the British Indian Empire in 1860, in-migration of members of peoples not regarded as "native" to region was strictly controlled through special laws and regulations, including the Inner Line Regulation, 1873.⁵⁵ These laws were later repealed in the case of the CHT (while they still remain valid in parts of Northeast India) and the population of Bengali-speaking people began to rise in the region, gradually at first, and then rapidly after the independence of Bangladesh in 1971. In particular, migration reached very high rates in the early 1980s, on account of a population transfer programme that rehabilitated between 250,000 to 450,000 landless Bengali people (predominantly Muslim), in the CHT through direct government sponsorship.⁵⁶ The last official census with ethnic break-up was the 1991 census. This estimates the 'tribal' population of the CHT to be about 51% of the total

⁵¹ Section 2(c), Hill District Council Acts of 1989 and section 2(C), CHT Regional Council Act, 1998. Sometimes a higher number of groups – such as thirteen - has been mentioned. This is largely due to a subgroup being classified as a separate group. For example, the Usui (as called by themselves, or 'Mrung', as the Marma refer to them) is sometimes classed as a separate group (1991 Census). The Usui generally regard themselves as part of the Tripura. Similarly, the Riyang are generally also regarded as part of the Tripura but are sometimes categorized separately (if at all, only very few Riyang live in the northern CHT now). The old lists sometimes included 'Kuki' in the CHT, although this group is known only in Manipur state of India.

⁵² Interview with Manju Rani Gurkha, Manoj Bahadur Gurkha et al (respectively, Chairperson and Vice-Chairperson, Adivasi Gurkha Welfare Foundation), Rangamati on 19 February, 2009. The above Gurkha leaders, along with leaders of the other groups, have petitioned the authorities several times for recognition of their Adivasi/tribal status over the last few years.

⁵³ The 1991 census was the last official census providing limited data with limited ethnic disaggregation.

⁵⁴ For the history of British colonization of the CHT, see: (i) Lewin, 1869; (ii) Serajuddin, 1968; (iii) Chakraborty, 1977; (iv) van Schendel, 1992; (v) van Schendel, et al, 2000.

⁵⁵ Apart from the Inner Line Regulation, 1873, these special laws included the Scheduled Districts Act, 1874 and Rule 52 of the CHT Regulation, 1900 (Act I of 1900). The provisions of the Inner Line Regulation, 1873 were re-introduced in a simplified manner through Rule 52 of the CHT Regulation, 1900, which itself ceased to apply to the CHT since the 1930s. See Ishaq (1975: 256). The 1873 Regulation still applies in various parts of Northeast India (e.g., Arunachal Pradesh & Mizoram state), and non-natives cannot enter into, or reside or trade within the state, on sanction of criminal penalties, without express permission of the state government. Similarly, the Chin Hills Regulation of 1896 (Regulation No. V of 1896) was also used in modified form in various parts of Assam, Meghalaya, Mizoram and Nagaland. See, for example, Chakraborty (1990: 151-153).

⁵⁶ For details of the population transfer programme, see e.g., See (i) Roy, 1997; (ii) Mohsin (1997: 49); and Adnan (2004: 49).

population of the region, although there is good reason to believe that this is an underestimate.⁵⁷ In contrast, the indigenous population made up 98% of the population of the region in 1872 (1872 official census).⁵⁸

With regard to plains Bangladesh, the nature and extent of minoritization is generally even sharper. The clearest example is greater Mymensingh district in north-central Bangladesh, a large part of which was, until 1962, included within a “partially excluded area”, denoting an area predominantly inhabited by indigenous peoples, including the *Mandi or Garo*, *Hajong*, *Koch* and *Hadi*.⁵⁹ Here too, the non-indigenous population has grown rapidly since the 1950s through overt and covert encouragement of, and patronage by, government leaders and officials.⁶⁰ Today, most indigenous communities in the plains form small pockets or enclaves in an otherwise Bengali-populated area. This means, among other things, that these peoples’ electoral strength does not usually allow them to elect an indigenous representative to local government bodies, let alone to parliament, with some very limited exceptions.⁶¹ This obviously impinges upon their opportunities of ‘participation in elective institutions’ as mentioned in the Convention.⁶² As in the case of the CHT, the 1991 census figures for the plains indigenous peoples are also believed to be ‘obvious’ underestimates, particularly in the northwestern Rajshahi division.⁶³ The aforesaid demographic changes have had far-reaching, and largely negative, consequences on their political, social and economic integrity, and their cultural identity. The situations in Mymensingh and the CHT in particular are clearly of the sort that the Convention sought to avoid, when it spoke against the ‘artificial assimilation’ of the population groups concerned.⁶⁴ Population transfer in both places was contrary to the non-discrimination clauses of the Constitution of Bangladesh,⁶⁵ the Convention on the Elimination of Racial Discrimination (CERD),⁶⁶ ratified by Bangladesh, and other general principles of international law concerning population transfer.⁶⁷

⁵⁷ According to Mro and Tanchangya leaders, as narrated the author, the actual population of their respective peoples is between three to four times that of the 1991 census figures. It is also said that the indigenous peoples who were living in refugee camps across the border in India during the time of the survey were excluded from the census. See further, (i) Roy (2002a: 6); (ii) Asian Development Bank (2001: 40).

⁵⁸ The sudden demographic changes caused by migration into the CHT was raised as an issue of concern by the ILO’s Committee of Experts in its Individual Observation published in 2005 (at paragraph 3): “It recalls the concern previously expressed that the displacement of tribal people from their lands in the face of continued immigration will submerge the traditional occupants of the areas, and notes estimates that the proportion of those living in the CHT who are tribal has gone from over 90 per cent to about 60 per cent in the last few years. It hopes the Government will take this into consideration in its development efforts, and in deciding whether to continue to encourage non-tribal settlers in this region”.

⁵⁹ For a discussion on partially excluded areas, see chapter 5.1. *supra*.

⁶⁰ Author’s interview with Promode Mankin, MP, several times, from 1993 to 2006, including in August, 2006.

⁶¹ The lone plains indigenous MP from Haluaghat, Pramode Mankin, makes an exception to this rule, by obstinately being elected to parliament for the third time, in December 2008, as a candidate of the Bangladesh Awami League, despite the indigenous voters forming only about one-tenth of the electorate. In addition to Mankin, the December elections also brought three other indigenous MPs – all from the ruling Awami League – into parliament, namely, Dipankar Talukdar (Rangamati), Bir Bahadur (Bandarban) and Jatindra Lal Tripura (Khagrachari). At a *National Consultation on ILO Convention No. 107 and Indigenous Peoples’ Issues in Bangladesh* held in Dhaka on 26 June, 2006 (attended by this author), Mankin related his personal experience in seeing the rise of the Bengali population of his region as a conscious decision of the government, especially in the 1950s and 1960s. The aforesaid MPs also hold special office in government part from their membership of the legislature. Talukder is the State Minister for CHT Affairs, Bir Bahadur, the chairperson of the CHT Development Board (a statutory development agency for the CHT), Tripura the chairpersonship of the Task Force on Refugees and Displaced People in the CHT and Mankin the chair of the Parliamentary Standing Committee on the CHT.

⁶² Article 5(C), Convention No. 107.

⁶³ Timm (1991: 11) cites others who feel that “undercounting has been done deliberately to emphasize the marginality of the Adivasi population”. See also, Bleie (2005: 13, 14).

⁶⁴ Article 2.1(c), ILO Convention No. 107.

⁶⁵ Relevant provisions of the Constitution of Bangladesh for indigenous peoples include article 14 (on the emancipation of backward sections of the peoples from all forms of exploitation), article 27 (on equality before law for all citizens), article 28 (which bars discrimination based on race, religion, caste, etc. and provides for affirmative action for disadvantaged groups) and article 29 (that provides for equal representation of backward section of citizens in the service of the republic).

III. THE LAWS OF THE PLAINS AND INDIGENOUS PEOPLES

The only substantive law that deals with the plains indigenous peoples is the East Bengal State Acquisition and Tenancy Act, 1950. Another law that mentions plains indigenous peoples – along with those in the CHT – is the Drugs and Alcoholic Substances Control Act, 1990. In addition other laws that affect plains indigenous peoples, although they do not directly refer to these peoples, include the Vested Property Act, 1974 and the Forest Act, 1927, including subsidiary rules framed under the last-named Act. In addition, there are the personal laws of the different peoples, which are regulated largely by traditional customs and practices. Therefore, the overall situation of extremely limited legislative, administrative and supervisory measures concerning indigenous peoples' issues of the plains region illustrates a state of affairs that falls far below the standard that was contemplated in Part VII (Article 27) of Convention No. 107. This contrasts with the situation in the semi-autonomous CHT region in the southeast, where one sees much more elaborate legislative, administrative and supervisory mechanisms concerning indigenous peoples' issues.

3.1. The East Bengal State Acquisition and Tenancy Act, 1950

The East Bengal State Acquisition and Tenancy Act, 1950 (Act XXVIII of 1950) is the major law regulating land administration in the plains.⁶⁸ A small part of this statute – at Section 97(1)(2) - deals with restrictions on the transfer of lands of “aboriginal castes and tribes” to any other than “[aboriginals] domiciled or permanently residing in Bangladesh”.

Although somewhat paternalistic, the aforesaid provision of the law seeks to prevent land alienation among indigenous peoples. This law predates the ILO Conventions No. 107 and 169, and ILO Recommendation No. 104 and concerns situations that are precisely of the nature that are contemplated by article 13 (2) of Convention 107, which provides that “arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.” Similar provisions are contained in Article 17(3) of Convention 169, and Recommendations 5(1) and 6 of ILO Recommendation 104, which are compatible with the more elaborate provisions of the Declaration on the Rights of Indigenous Peoples (especially articles 25-30). The application of the law, however, is unequal across the plains. Except in parts of greater Mymensingh district that were formerly ‘partially excluded areas’, there are widespread reports of non-implementation of this law.⁶⁹ In Mymensingh, there is an understanding between the district administration and the *Tribal Welfare Association* – a social organization that goes back to the British period – whereby the district authorities do not allow land transfers by Mandi (Garo) and other aboriginal peoples without first consulting the association.⁷⁰ Similar but somewhat less institutionalized practices of consultation are evident in

⁶⁶ The definition of discrimination in Article 1 of CERD covers the CHT situation since it involved the transfer of population of a selected race or ethnic origin in an area of a distinctly different race or ethnic origin, and had the effect of impairing the rights and freedoms of the latter group.

⁶⁷ Roy, R. C. (2000: 122). See also, UN Document No. E/CN.4/Sub.2/1994/18.

⁶⁸ The East Bengal State Acquisition and Tenancy Act, 1950 is based upon the Bengal Tenancy Act, 1938, which itself is rooted in the Chota Nagpur Tenancy Act, 1908, the Indian Tenancy Act, 1878 and the Permanent Settlement Act, 1793. See, Timm (1991: 20).

⁶⁹ For the meaning of a ‘partially excluded area’, see chapter 5.1., supra.

⁷⁰ Interviews with Promode Mankin, MP, Mandi (Garo) leader and President of Tribal Welfare Association several times, between 1993-2006. Similar information was provided by participants from Mymensingh at a workshop on *Access to Justice – Indigenous Peoples of the Plains*, organized by UNDP, Dhaka, and held in Dhaka on 27 February, 2006 (attended by this author). The participants from greater Mymensingh included Albert Mankin, Advocate Hillol Titus Rema and Ajoy A. Mree. In Dinajpur, consultations regarding land transfer matters are known to have taken place in the past with the *Aboriginal Welfare Association*, but the association does not appear to be functional any more.

Dinajpur district, but not in other parts of Rajshahi division.⁷¹ Such practices are consistent with the provisions on collaboration and participation of indigenous peoples, as contained in article 5 of Convention No. 107. More elaborate guidelines on legislative and executive measures in cooperation with indigenous peoples are contained in Part VIII (Article 33) of Convention No. 169.

The situation of land alienation in the Rakhaing-inhabited south-central Patuakhali-Barguna region is also a matter of particular concern.⁷² During British times, and perhaps even on to the early period of Pakistani rule, special officers – generally styled as *Welfare Officers* – used to bear special responsibility to protect the welfare of indigenous peoples, including in Mymensingh and in the Patuakhali-Barguna region, but there is no such office in the aforesaid places any more.⁷³ It is reported that in Dinajpur district, the post of Welfare Officer still exists, and yet seems to have little or nothing to do with the welfare of the local indigenous people.

Despite its rather paternalistic setting, and its limitations in dealing with fraudulent and violent land-grabbing not involving land title transfers, the Tenancy law of 1950 nevertheless has the potential to minimize, if not totally stop, land alienation of the plains indigenous peoples. Certain provisions of the Act could perhaps be more proactively promoted and invoked in favour of indigenous peoples. Reforms to include provisions on repossession of dispossessed lands, and/or the formation of a body to provide expeditious remedies for land alienation cases would perhaps improve the situation a great deal. It cannot be said whether such reforms will eventuate in the near future. It is therefore incumbent to make the best possible use of this law. As it were, for reasons that are unlikely to be related to the indigenous peoples, the 1950 law also happens to be one of the laws – and in fact, the first-named law – that is specially protected by the Constitution of Bangladesh in its First Schedule. This means that the constitutionality of the law – as in the case of the other laws included in the Schedule – cannot be questioned in court on grounds of being contrary to the fundamental rights clauses of the constitution. This is an important safeguard, considering that various comparable laws of special application in the CHT have undergone legal challenges in the superior courts.⁷⁴

3.2. The Drugs and Alcoholic Substances Control Act, 1990

The Drugs and Alcoholic Substances Control Act, 1990 (Act XX of 1990) exempts “tribals” – both in the plains and in the CHT – along with tea estate labourers and the castes of “Muchi” (cobbler), ‘Methor’ (sweeper) and ‘Dom’ (fisher-people or cremation ground cleaners) from criminal prosecution for consuming traditionally brewed or distilled alcoholic beverages. Although seemingly a mundane matter, this is an important recognition of the cultural rights of the indigenous peoples, whose religious and cultural practices and social customs often included, and still include, the use of traditionally brewed liquor. This provision may be seen to cover situations contemplated by Articles 7 (2) and 8 of Convention No. 107. Article 7(2) provides for the retention of customs (and institutions) of indigenous peoples, while article 8 provides that government authorities and courts dealing with penal matters involving indigenous peoples should bear in mind the customs of the people concerned.

3.3. The Vested Property Act, 1974

⁷¹ Source: aforesaid workshop on *Access to Justice* of 27.02.2006. Participants from Rajshahi division included Rabindranath Soren. In other parts of Rajshahi division, such as Rajshahi, Joypurhat, Naogaon, Bogra, Natore, Pabna, Chapainawabganj, no such consultation is known to take place before the concerned Revenue Officer exercises discretion to allow or disallow land transfers.

⁷² Zahur, 2005. See also, *Daily Star*, Dhaka, of 02.08. 2003.

⁷³ The source of this information is the above workshop on *Access to Justice*, as well as interviews with several Rakhaing, Santal, and Oroan leaders over the last nine years. The post of Welfare Officer was also in vogue in the CHT until the late 1970s, and was always held by a local indigenous person.

⁷⁴ In contrast, the laws of the CHT are no longer specially protected since the removal of tribal area status of the CHT in 1964 through the Constitution (First Amendment) Act, 1963. One result of this has been legal challenges on the constitutionality of several CHT laws. See further, chapter 5.1., *supra*.

In the plains, another tool used by influential and unscrupulous land-grabbers has been the Vested and Non-resident Property (Administration) Act, 1974 (Act XLVI of 1974), generally known as the *Vested Property Act*. This Act is based upon a number of laws framed in 1965 and thereafter, to deal with properties of people who went over to India, with which country Pakistan (Bangladesh was then the eastern wing of Pakistan) was at war with in 1965.⁷⁵ The 1974 Act has been indiscriminately used against different minority groups, including indigenous peoples in the northwestern Rajshahi division,⁷⁶ and against Mandi (Garo) people in north-central Bangladesh,⁷⁷ among others. Although the law has since been repealed, certain loopholes stand in the way of redressing wrongs perpetuated in its name.⁷⁸ The return of lands of indigenous people taken over by invoking the Vested Property Act is one of the 9-point demands of the Jatiyo Adivasi Parishad, the main organization of the indigenous peoples of the northwest.⁷⁹ The discriminatory application of the aforesaid Act is clearly contrary to Article 13 (2) of Convention 107, which provides for arrangements to “prevent persons who are not members of the populations concerned from taking advantage of lack of understanding of the laws on the part of the members of these populations”. This law was amended in 2009 by the Caretaker Government of Bangladesh through the passage of an ordinance.⁸⁰ The amendment sought to simplify the process of de-listing of lands unfairly or baselessly included within the list of vested property.

3.4. The Forest Act of 1927

In addition, there are a number of other laws, which do not specifically mention the plains indigenous people, but are of direct relevance to their land and resource rights. One such law is the Forest Act of 1927 (Act XVI of 1927), which regulates the manner of the administration of forest areas and forest produce. Various provisions of this Act, particularly section 28, concern customary land rights of indigenous people. Section 28 (1) of this Act empowers the government to “assign to any village community the right of Government to or over any land which has been constituted into a reserved forest”. This provision is compatible with article 11 of Convention No. 107, which provides for the recognition of the collective and individual rights of indigenous and tribal people over lands traditionally occupied by them. Since a significant number of plains indigenous people live within reserved forest areas, particularly in the northeastern Sylhet division, in the north-central greater Mymensingh area, and within Chittagong and Cox’s Bazar districts of Chittagong division, this provision has important implications for their rights. In some parts of Sylhet division, village communities of the Khasi people have secured short-term written agreements over use of reserved forest land, but on the expiry of the lease period, the same were not renewed.⁸¹ Other communities of indigenous peoples in greater Mymensingh, greater Chittagong and Cox’s Bazar continue to live within reserved forest areas, but no written agreements are known to have been entered into with them, unlike in Sylhet division. Their existence and livelihoods in these areas are therefore even more precarious. In November 2009, the Ministry of Environment and Forests formed a committee to consider the framing of rules on Forest Villages in accordance with section 28(1) of the Forest Act.⁸² The same committee was also entrusted the

⁷⁵ These laws include the *Defence of Pakistan Ordinance, 1965* (Ordinance No. XXIII of 1965), the *Defence of Pakistan Rules, 1965*, the *Enemy Property (Custody and Registration) Order, 1965* and the *Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969* (Ordinance I of 1969). For a detailed discussion of the genesis of this law, and for case studies on its misapplication against religious minorities, Barkat et al (1997: 17-54, 95-114).

⁷⁶ Timm (1991: 21). See also, Bleie (2005: 213-241).

⁷⁷ Timm (1991: 20, 21, 26).

⁷⁸ Roy (2005a:17).

⁷⁹ Soren (2006: 25).

⁸⁰ An ordinance in Bangladesh is a law framed by the President when parliament is not in session. The law lapses, if not ratified by parliament at its forthcoming session (see article). It remains to be seen how many of the ordinances framed by the Caretaker government are accepted by the newly-elected Awami League-led government.

⁸¹ Author’s interview with Khasi village headmen (Myntri) in Maulvibazar district, Sylhet, in June, 2001 as cited in Roy (2002a: 23).

⁸² The meeting – held at the Ministry of Environment & Forests on 25 November, 2009 and chaired by this author in his capacity as the then Minister of State (“Special Assistant to the Chief Adviser”) of the Ministry of Environment & Forests –

responsibility of drafting a Traditional Forest Dwellers (Recognition of Rights) Act.⁸³ The framing of the proposed rules is therefore crucial to both protect the rights of the forest dwellers but also to bring forth cooperation between the Department of Forests and forest-dwelling communities. The concerned rule-making prerogative is vested upon the Ministry of Environment & Forests, and does not require formal legislation by parliament. It is not known, however, whether the ministry is actively considering reforms in this sector.

3.5. The Social Forestry Rules

Another law that affects the land rights of indigenous peoples is a delegated law, namely, the *Social Forestry Rules of 2004*, passed in accordance with the aforesaid Forest Act of 1927 [sections 28A(4) and 28A(5)]. These rules contain detailed provisions for social forestry projects, and “ethnic minorities” (a phrase that would include most groups legally classified as indigenous, tribal or aboriginal) are among those that are to be given priority in selection as beneficiaries of the project (along with landless people and “destitute women”).⁸⁴ The aforesaid provisions are compatible with article 15 of Convention No.107, which concerns prevention of discrimination against indigenous and tribal workers, and special measures for their recruitment. They are also compatible with the provisions of ILO Convention 111, which concerns the elimination of discrimination in employment.

3.6. Customary Personal Laws

Bangladesh, as in Pakistan, India and Malaysia, has no uniform civil code of general application to govern the family laws of all its citizens. Instead, rules concerning marriage, divorce, separation, maintenance, advancement, child custody and inheritance, and other related matters, are regulated in accordance with the ethnic or religious affiliations of the citizens concerned. Thus, while Muslim Law governs the family laws of Muslim Bangladeshis, and Hindu law governs the family law of the Hindu Bangladeshis, the rules of family matters of the indigenous peoples are governed by their customary laws, which are largely unwritten, generally irrespective of their religious affiliation or spiritual beliefs. This is also the case with the hill peoples of the CHT. Personal laws of most Bangladeshi peoples – whether indigenous or Muslim or Hindu - tend to be generally discriminatory against women. Apart from the peoples among whom Christianity has taken firm roots, polygyny is practiced to a certain extent, and women are generally excluded from inheritance rights, either wholly or partially. The noteworthy exceptions are in the case of the Mandi (Garo) and the Khasi, both of whom follow matrilineal traditions, where generally, only the women inherit landed property.⁸⁵ The express or implied recognition of the indigenous peoples’ customary laws is compatible with articles 7(1) and 7(2) of Convention 107, which deals with customary laws, customs and institutions of indigenous and tribal people. However, the presence of practices that are discriminatory against women is contrary to article 7(3) of the Convention. This article seeks to prevent situations in which the application of customary law may infringe upon rights that are otherwise available to other indigenous people as citizens of a state. Therefore, since the Bangladeshi constitution prohibits discrimination against women (articles 27 and 28),

discussed the draft of a law entitled “Village Forest Rules, 2008” and included senior Forest Department officials, and indigenous leaders from the CHT and the plains. A committee was formed with a Joint Secretary of the ministry as head to refine the draft in consultation with representatives of indigenous peoples and other forest dwellers. The meeting was convened by Sheikh Shoabul Alam, Senior Assistant Secretary, Ministry of Environment & Forests, addressed to Ministry officials and indigenous leaders vide Memo No. Pa Ba Ma (Ba: Sha: -1) 71/2008/1117 dated 25/11/2008.

⁸³ This committee was also formed at the aforesaid meeting mentioned in footnote 81 above. Parallel to the dialogues on the above-mentioned matters, a number of consultations were also held to amend the law regulating extraction and transit of forest produce in the CHT, namely, the CHT Forest Transit Rules of 1973, to enable CHT farmers to sell the produce of their plantations without harassment and bureaucratic red tape. The draft of the amended Forest Transit Rules were sent by the A. K. Shamsuddin, Chief Conservator of Forests to the Secretary, Ministry of Environment & Forests vide his Memo No. Pra Ba Sha (Sha)/ -7 R-8 (Part-4)/2008/1532 dated 24/12/2008. A proviso to section 3 of the existing Rules exempts “members of hill tribes” using firewood and “minor forest produce” for home consumption in areas outside the reserved forests from the requirements of obtaining licences and permits from the Forest Department. If the amendments are accepted, it is expected that the customary forest rights of the CHT indigenous peoples would be strengthened and local tree farmers would be able to make a living without discrimination.

⁸⁴ For a critique of the Forest (Amendment) Act, 2000 and the (then draft) Social Forestry Rules (passed in accordance with the 2000 Act) as violative of the land and other rights of indigenous peoples, see Roy & Halim (2001).

⁸⁵ Mankin (2004: 25-31).

these constitutional provisions may be invoked to protect indigenous women's right to equality and to the equal protection of the law; the same would be an instance that was contemplated by the provisions of article 7(3) of Convention 107. The provisions of the Convention on the Elimination of Discrimination against Women (CEDAW), which has been ratified by Bangladesh, is also a very relevant instrument in this regard. It is therefore vital for the protection of the rights of indigenous women in Bangladesh to consider the ambit of article 7(3) of Convention 107 in line with the progressive thinking on women's rights as acknowledged by the provisions of the Constitution of Bangladesh and those of CEDAW.

3.7. Personal Laws of Adivasis and Justice Administration in the Plains

As mentioned in chapter 3.6 above, the personal laws of indigenous peoples of Bangladesh, both in the plains and in the CHT, are regulated by their own customs, traditions and practices. In addition, the CHT also has its own justice system, including traditional indigenous chiefs (rajas) and headmen, whose justice administration and other functions are formally recognised by law.⁸⁶ In contrast, the self-governing systems and representative institutions of the plains Adivasis have long ceased to be recognized by the Government, although their functions nevertheless continue, and most personal law disputes are still resolved at the level of traditional and other community leaders rather than in the government courts of justice. In 2008, a proposal was tabled before the Advisory Council of the Caretaker Government of Bangladesh to amend the Union Parishad Ordinance of 2008 to reserve seats in union councils for Adivasis of the plains (see chapter 2.1. above). Unfortunately, the amendment did not eventuate. Had it taken place, the amendment could have been a major catalyst in strengthening the role of the plains Adivasis in local self-governance, reversing a trend of centuries, whereby their self-government institutions and justice systems came to be de-recognised and marginalized.

Otherwise, although their traditional elders and –leaders still exercise significant authority in the resolution of disputes among their communities, on account of the absence of any formal recognition by law, their authority has been severely eroded over the years. Reforms to the Union Parishad laws and to the Gram Adalat Court Act of 1976 (Village Courts Act) could provide a formal role to Adivasi community leaders in the administration of justice on personal law matters. The latter law provides for arbitration headed by the Union Council chairman, including nominees of the litigants, whose decisions have the force of law.⁸⁷

IV. THE LAWS OF THE CHITTAGONG HILL TRACTS

In contrast to the plains, there is a large body of law in the CHT that relates to the unique administrative system in the CHT, some of which recognise the primacy of the indigenous peoples of the region. These laws can be broadly divided into two groups: those of the period before 1997 - the year of the signing of the CHT "peace" Accord – and the laws of the post-1997 period. The first-named group primarily includes the CHT Regulation, 1900 and laws specified in its schedule (which apply to the CHT to the extent and in the manner described therein), and the Hill District Council Acts of 1989. The second groups includes the three practically identical laws of 1998, which amend the Hill District Council laws of 1989, the 1998 law that introduces the CHT Regional Council, the 2001 law on the *CHT Land Dispute Resolution Commission*, and lastly, the law on reforms to the civil and criminal justices system, passed in 2003. In addition, there are the customary and largely unwritten family laws of the different peoples, which are administered locally by the chiefs and headmen.

4.1. The CHT Regulation, 1900

⁸⁶ See chapters 4.1 and 4.4., post.

⁸⁷ It has been alleged that this law is suffering from acute neglect in most parts of Bangladesh. See, e.g., "Legal limitations impedes Gram Adalat to be effectual" in Daily Star Internet Edition, 20 June, 2004

The CHT Regulation of 1900 (Act I of 1900), is undoubtedly one of the most important laws of the CHT. It “lays down a detailed policy for the general, judicial, land, and revenue administration of the region and defines the powers, functions and responsibilities of various officials and institutions..... [It] stipulates the manner and extent of the application of other laws to the region, many of which apply only to the extent that they are not inconsistent with the Regulation.”⁸⁸ Thus it functions in the nature of a constitutional legal instrument, which vets the application of other laws to the region, although it no longer enjoys any formal constitutional status. The Regulation implicitly accounts for the practice of customary law, and therefore, lays down guidelines on the manner of regulation of land and resource-use patterns, rather than explicitly mentioning those practices and related rights. It has been said that “[the Regulation] was not intended to be a declaratory instrument that sought to identify, define and declare various customary rights and privileges, but a regulatory law that sought to regulate already existing rights...”.⁸⁹ The Regulation thus provides a simple system of administration of justice and recognizes the authority of three traditional chiefs and about 380 mauza headmen.⁹⁰

In 1989, when the unrest in the CHT was still continuing, and before the “Peace Accord” of 1997 was signed, the Government of Bangladesh introduced a legal package to introduce district-level councils in the CHT, and to repeal the CHT Regulation.⁹¹ However, the law intended to repeal the Regulation was never put into effect. Instead, the CHT Accord of 1997 and the CHT Regional Council Act, 1998 provide that the CHT Regional Council will advise the Government of Bangladesh to remove inconsistencies between the CHT Regulation and the Hill District Council Acts, 1989.⁹²

The 1900 Regulation draws upon several special regulations used by the British colonial authorities in other parts of their then empire. Foremost among these are the Chin Hills Regulation, 1896 (Regulation No. V of 1896), formerly applying in some of the Chin-inhabited areas of Burma (‘Myanmar’) and to some parts of Northeast India, and the Daman-i-Koh Rules, hitherto applying to parts of Santal-inhabited territory in India, including what now forms Jharkhand state. As with other comparable special regulations of the colonial period, on the one hand, the 1900 Regulation affirms and acknowledges certain rights of the hill peoples. On the other hand, it also limits those rights by retaining supreme authority upon the government. In the case of Rangamati Food Products v. Commissioner of Customs & Others in the High Court Division of the Supreme Court of Bangladesh, while discussing the question of the applicability of tax laws to the region, the court declared that the CHT Regulation, 1900 was a “dead law”.⁹³ However, there were other judgments of the High Court in which the Regulation was regarded as a fully valid law,⁹⁴ and therefore, a special bench was constituted to hear three related cases on the

⁸⁸ Roy (2000b: 44).

⁸⁹ Roy (1994:16). While explaining the background of the Regulation, the Secretary of State for India was advised that the “regulation has been framed on the principle that it should contain only a few substantive provisions, the details of the administration being regulated by rules to be issued under powers conferred by the Regulation... The officer in charge of the Hill Tracts will continue to exercise the powers of a District Magistrate, and the Commissioner those of a Sessions Judge and also of a High Court....”; Extract from Memo No. 316, dated, Simla, 7 September, 1899 from the Government of India, Finance and Commerce Department to the Secretary of State for India, Chakma Raja’s Archives, Rangamati.

⁹⁰ The three chiefs are the *Chakma Chief* (a Chakma), the *Bohmong Chief* and the *Mong Chief*, the latter two being Marma, all three being male at the moment. Most headmen are male and from one of the eleven indigenous peoples, although there are a small number of ethnic Bengali headmen (all male), and a few female headmen. .

⁹¹ Roy (2003a: 30).

⁹² Section 52, CHT Regional Council Act, 1998.

⁹³ (10 BLC, 2005, 525).

⁹⁴ These cases include: Mustafa Ansari v. DC, CHT & Another (7 DLR, 1965, 553), Collector of Central Excise & Land Customs v. Azizuddin Industries Ltd (23 DLR SC, 1971, 73), Shewe Hla Prue TK v. Commissioner Chittagong & Others (44 DLR, 1992, 539), Aung Shwe Prue Chowdhury v. Kyaw Sain Prue Chowdhury & Others (50 DLR, AD, 1998, 73), Sampriti Chakma v. Commissioner of Customs & Others (5 BLC, AD, 2000, 29), Bikram Kishore Chakma v Land Appeal Board (6 BLC 2001, 436), BFIDC & Others v. Sheikh Abdul Jabbar (53 DLR 2001, 488), Abu Taher v. Land Appeal Board (8 BLC, 2003, 453), Rajkumari Unika Devi v. Bangladesh & Others (9 BLC, AD, 2004,181).

CHT and provide a ruling on the validity of the Regulation.⁹⁵ The CHT Regional Council, the Chiefs and the headmen presented memoranda to the then deputy minister of the Ministry of CHT Affairs, urging steps to defend the Regulation.⁹⁶ The deputy minister (also the MP from Rangamati) in turn, wrote to the Attorney General advising him that the Government of Bangladesh should take a stand in favour of retaining the CHT Regulation, 1900, citing the importance of the role of the chiefs, headmen and karbaries (village elders),⁹⁷ the need to protect the rights of the different peoples of the CHT, related constitutional provisions, the likely negative impact on the legislative prerogatives of the CHT Regional Council, and the government's desire to soon put into effect the 2003 amendment of the CHT Regulation to reform the system of administration of justice in the CHT.⁹⁸ The CHT Regional Council, the three Chiefs and headmen filed separate applications to be added as parties in the matter. Soon afterwards, the Government of Bangladesh filed an appeal against that portion of the judgment of the Rangamati Foods case that declared the CHT Regulation, 1900 to be a "dead law", presumably acting on the basis of advice received from the CHT minister. Consequently, the three cases before the Special bench were adjourned.⁹⁹ Moreover, the effect of the Rangamati Foods judgment with regard to the validity of the CHT Regulation was stayed by the Appellate Division of the Supreme Court pending the outcome of the *Leave to Appeal* petition.¹⁰⁰

Several provisions of the CHT Regulation are compatible with Convention 107, or with those of the supplementary Recommendation 104, while some go beyond Convention 107. Some of the latter are closer to the provisions of Convention 169, and some are even comparable to the provisions of the UN Declaration on the Rights of Indigenous Peoples, which is regarded as an instrument that generally recognizes a higher standard of rights than that of ILO Conventions No. 107 and 169. For example, the provisions of the 1900 Regulation with regard to the offices of the chiefs and headmen (Rules 39, 40, 47, 48) demonstrate a situation of the nature that was contemplated by article 7(2) of Convention 107, which seeks to allow indigenous people to "retain their own customs and institutions". Similarly, several provisions in the Regulation concerning land - including rules 34, 41, 41A, 42, 43, 45B and 50 (1) - expressly or implicitly recognize the individual and collective rights of the CHT indigenous people over swidden, grazing and forest lands traditionally occupied by them, as contemplated in articles 11 and 13 (1) of Convention 107. Likewise, the provisions of rule 34(14) of the Regulation that restrict the

⁹⁵ These cases are: Writ Petition No. 9513 of 2005 (S.P. Marma vs. Deputy Commissioner, Rangamati and Others), Writ Petition No. 3686 of 2004 (Anil Kanti Chakma and Others vs. Additional Divisional Commissioner, Chittagong and Others) and Writ Petition No. 149 of 2003 (Ulha Su Pru Choudhuri vs. Anaram Tripura).

⁹⁶ The three separate representations from the CHT Regional Council, the three Chiefs and on behalf of headmen from the three circles, respectively dated, 04.06.2006, 04/06/2006 and 06/06/2006, were sent to the Deputy Minister, Ministry of CHT Affairs, urging him to intervene on their behalf.

⁹⁷ The role of the chiefs and headmen in the CHT administration are described, among others, in rules 38-41, 43, 47, 48 and 50. See also, Khan (2004: 24-25) and Martin (2004: 71-80). For the role of the karbaries, which is not explained in detail in the CHT Regulation, or any other law, see Khan (2004: 25-26).

⁹⁸ D.O No. 1452 dated 8/6/2006 from M. S. Dewan to the Attorney General for Bangladesh, copied to the Minister and the Secretary of the Ministry of Law, Justice and Parliamentary Affairs, the Chairman, CHT Regional Council, the chairpersons of the hill district councils, and the three *rajas* (circle chiefs).

⁹⁹ By an order dated 19.06.2006, this special bench of the High Court Division took account of the submissions made by the Deputy Attorney General that Civil Petition for Leave to Appeal No. 696/2006 had been filed before the Appellate Division against the judgement reported in Rangamati Foods case, and adjourned the matter until the decision of the Appellate Division on the matter. The applications filed by the CHT Regional Council, the three chiefs and headmen to be added as respondents were kept with the records for necessary orders, and the matter was not treated to be taken up for judgement, and the entire matter was adjourned for further hearing, until 18 July, 2006.

¹⁰⁰ In Civil Petition for Leave to Appeal No. 696/2006, the Government of Bangladesh prayed for stay of operation of the judgment and order dated 13.05.2003 passed in Writ Petition. No. 1774/2001 so far as it relates to CHT Regulation I of 1900 until hearing of the leave petition. The order of Chamber Judge of the Appellate Division dated 19.06.2006 stated the following: "Stay as prayed for is granted till 20 August 2006 on which date the leave petition come up for hearing before court". Despite this order, the matter is not known to have reached the stage of hearing at the time of writing of this report.

inheritance of CHT land by non-residents are comparable to the provisions of Article 13(2) of Convention No. 107, which seeks to prevent land alienation of indigenous people at the hands of non-indigenous people through unfair means. Other relevant comparable provisions include rule 40 of the Regulation, which empowers traditional chiefs and headmen to try disputes among their people by invoking customary law. These are consistent with the provisions of Article 8(a) of Convention No. 107, which provides that “the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations”. Then there is rule 38 of the Regulation that recognizes the duty of the chiefs to look after the education and health needs of their people, which is compatible with articles 20 and 21 of Convention 107, although the latter provisions more substantively address the responsibility of the government, rather than that of indigenous leaders or officials.

4.2. The Hill District Councils Acts of 1989

The Hill District Council Acts of 1989 (Acts XIX, XX & XX of 1989) established three identically-empowered councils at the district level, reserving two-thirds of their seats and the office of the chairperson, for ‘tribals’. According to this Act, the number of seats for the members is to be allocated according to ethnicity and, ostensibly, the relative population of the different ethnic groups. The councils were provided limited authority over a number of district-level government departments. These laws were amended in 1998 in accordance with the provisions of the CHT Accord of 1997, whereby the councils were provided more authority and autonomy than before,¹⁰¹ through an increase in the number of transferred subjects, and enhancement of their authority over land administration, local police, budgets, and other matters.¹⁰² Each council is to have 33 members, excluding the chairperson, and the chiefs have the prerogative of attending any meetings of the concerned council, although they cannot vote. The councils are to be ultimately elected by tribal and non-tribal permanent residents of the concerned districts. However, apart from the first and rather controversial election in 1989, the councils have until now been administered by government appointees.¹⁰³ At the time of writing, the councils have one chairperson and four members each, all men, who were appointed by the interim Caretaker Government of Bangladesh. Dissatisfaction has been expressed on several occasions over the non-representation and under-representation of women, in the interim district councils, even during the earlier periods under BNP and Awami League.¹⁰⁴ Similarly, complaints have been made about under-representation of different indigenous groups as well.¹⁰⁵ It is to be seen whether the newly-elected Awami League-led government provides justice in this matter.

4.3. The CHT Regional Council Act of 1998

The CHT Regional Council Act, 1998 (Act XXII of 1998) is another law that resulted from the 1997 Accord.¹⁰⁶ It established a regional council for the CHT, to be indirectly elected by the members of the three district councils. As in the case of the district councils, the office of the chairperson and that of two-thirds of the members of the regional council are reserved for ‘tribals’. It has 24 members excluding the chairperson. It is to be ultimately elected by an

¹⁰¹ It is noteworthy that the words ‘autonomy’ or ‘self-government’ do not appear anywhere in the 1997 Accord or in the subsequent laws, reflecting the desire of the Government of Bangladesh to avoid such words.

¹⁰² When they were first passed in 1989, the Hill District Council Acts, 1989 were called the Hill District (Local Government) Council Acts, and the three district councils were called “local government councils”. The aforesaid three Acts were part of a package resulting from an agreement between the Government of Bangladesh and a number of indigenous leaders from the three districts in 1988, but excluding the then underground JSS. See Roy (2000b: 30).

¹⁰³ For a detailed description of the role of the hill district councils, see Khan (2004: 13-18) and Martin (2004: 47-70).

¹⁰⁴ Demands were made recently, on 8 March, 2009 on the occasion of International Women’s Rights Day in Rangamati, Chittagong Hill Tracts. The matter was reported in the press and media, including in the internet version of the Daily Sangbad, Dhaka, of 9 March, 2009. For other coverage, see *Daily Ittefaq*, Dhaka of 23 March, 2009.

¹⁰⁵ Interview with Sudatta Bikash Tanchangya, General Secretary, Bangladesh Tanchangya Welfare Association and Zuan Lian Amlai, President, Bawm Social Council, several times between 2003-2008.

¹⁰⁶ For a detailed description of the role of the CHT Regional Councils, see Khan (2004: 8, 9) and Martin (2004: 31-46).

electoral college consisting of the 99 district councillors and the three chairpersons of the hill district councils.¹⁰⁷ However, no elections for the regional council, or for that matter, for the district councils, have been held (except for the district councils in 1989). Pending elections, the members of the CHT Regional Council are all government appointees.¹⁰⁸

The CHT Regional Council exercises supervisory and coordinating authority over such matters as development activities, general administration, the hill district councils, local government councils, the CHT Development Board, and customary law and social justice, thus accounting for a wide array of administrative and developmental functions. One of the most crucial features of the Act is the recognition it provides to the region as a “tribal-inhabited area”,¹⁰⁹ and the prerogative of the council to advise the Government of Bangladesh on legislation concerning the CHT.¹¹⁰ However, in practice, the Regional Council has been unable to effectively play its expected role, as aspired for during the signing of the Accord, for a variety of reasons, including non-devolution of the requisite authority upon it, as claimed by the chairperson of the council,¹¹¹ and the over-bureaucratized and departmentalized structure of the council.¹¹²

4.4. Personal Laws & Traditional Justice Systems¹¹³

As in the case of the plains, the customary personal laws of the different peoples in the CHT also vary from people to people.¹¹⁴ There are, however, two important distinctions, among others, between the plains and the ‘hills’. Firstly, matrilineal traditions are less common in the CHT than in the plains. One section of the Marma people, particularly those living in the southern CHT, stand out as the only indigenous group in the CHT that allows its women to inherit some landed property, as of right, although not in an equal manner with its men.¹¹⁵ The second major difference is that while in the plains the self-government systems of the indigenous peoples, including their juridical systems, have been long deprived of formal state recognition, the customary justice system administered by chiefs and headmen in the CHT is still recognized by law.¹¹⁶ The customary law practices and the continuing functions of the traditional chiefs and headmen in the administration of justice, and in other spheres of administration, are compatible with the provisions of articles 7 and 8 of Convention No. 107. Article 7 acknowledges the need to give due regard to customary laws of indigenous peoples in defining these peoples’ rights and duties,

¹⁰⁷ Section 6, CHT Regional Council Act, 1998.

¹⁰⁸ The incumbent chairperson of the CHT Regional Council is J. B. Larma, the chairperson of the JSS. Larma represented the JSS and was one of the two signatories to the CHT Accord of 1997. The other signatory was Abul Hasnat Abdulla, MP, representing the Government of Bangladesh.

¹⁰⁹ The preamble to the CHT Regional Council Act, 1998, refers to the CHT as a “tribal-inhabited area” and recognizes the need to protect the “political, social, cultural, educational and economic rights of all people of Chittagong Hill Tracts including the tribal people of the region”.

¹¹⁰ Sections 52 & 53, CHT Regional Council Act, 1998. These measures actually go beyond the comparable provisions of Convention No. 107, and are consistent with Convention No 169 [Article 33 (2) (b)].

¹¹¹ Larma, 2003.

¹¹² Martin (2004: 37-43), Ahmed et al (2000).

¹¹³ For a detailed discussion of the customary law and indigenous justice system in the CHT, see Roy (2004). For an overview of the differing situation of different indigenous peoples’ customary laws in Asia, see a Minority Rights Group International report of 2005 authored by this writer [Roy (2005a)].

¹¹⁴ Chakma (2001).

¹¹⁵ Chakma (2001).

¹¹⁶ It is noteworthy that although the offices of about 380 headmen and three traditional chiefs remain formally recognized by law, this also hides the fact that smaller chieftaincies and headships of some of the less numerous groups had become de-recognized, starting with British annexation, as is the case for most indigenous peoples in the plains. For historical accounts in the case of the CHT, see: Hutchinson (1978: 12), Mey (1984: 331), Brauns & Lorenz (1990: 30), van Schendel et al (2000: 25, 29, 32).

and likewise recognizes the right of the peoples concerned to retain their own customs and institutions. Article 8 gives importance to adherence to customary law in the administration of criminal justice and penal provisions.

Major infrastructural, economic and other developments, including the expansion of the road network and communications systems, the spread of education, growing urbanization and other related developments have triggered important occupational and other social changes in the CHT over the years.¹¹⁷ Polygyny, for example,¹¹⁸ is clearly on the decline, especially among the Christianized groups. There are strong demands among indigenous human rights and women's rights activists to completely outlaw polygyny, and to remove all other practices discriminating against women, including on inheritance and child custody.¹¹⁹ Other major challenges being faced by the CHT indigenous peoples with regard to their customary personal laws – which substantively follow oral traditions - is the question of whether to go for partial or full codification, and how to face the difficulties in the interface between traditional courts and state courts, and that between customary law and statute law.¹²⁰ The Supreme Court of Bangladesh has strongly acknowledged the importance of protecting the customary laws of the CHT.¹²¹

One other challenge to customary law is the situation of indigenous migrants from the CHT who now live and work in the metropolitan centres of Dhaka and Chittagong. There are an estimated twenty-five to thirty thousand workers in factories in these two cities, at least half of whom are women, who have to deal with their customary law matters (marriage rites, family law disputes, etc) without having access to traditional authorities (chief, headman, karbari). In a number of meetings called by the leaders of voluntary civic associations of these migrants, it was proposed that the city equivalent of village elders or 'karbaries' be nominated by the workers and formally appointed by the traditional *rajas* (Circle Chiefs). An understanding on this matter has been reached between these communities and the Chakma Chief, who represented the three chiefs in discussions with the indigenous migrant leaders.¹²²

4.5. Other Post-Accord Laws

4.5.1. *The CHT Land Commission Act of 2001*

Apart from the regional and district council laws, the *CHT Land Commission Act, 2001* (Act LIII of 2001) is the most important post-1997 law. This law introduces a body to provide expeditious remedies to the longstanding problem of land-related disputes, especially those between hill people and Bengali-speaking population transferees of the 1980s. Although called a 'commission', its functions will be more in the nature of an adjudicating body's, rather than that of a commission of enquiry. In order to ensure a fair process, the Act ensures that seven of its nine members are indigenous leaders. The commission is also obliged to take into account the "laws, customs and usages" of the CHT.¹²³ Although the council has been set up, it is not fully functional yet, since the chairperson of the CHT Regional Council, and all or most of the other indigenous members, do not agree to start work until the discrepancies between the Act and the provisions of the CHT Accord are removed through legal amendments. Among these are the virtual veto powers provided to the commission's chairperson, in the event of disagreements between the commission's other members and uncertainties regarding the jurisdiction of the commission over

¹¹⁷ Roy (2000a).

¹¹⁸ Polygyny is to be distinguished from polygamy. Polygyny means 'several wives', while polyandry means 'several husbands'. 'Polygamy', meaning several marriages, includes both polygyny and polyandry. There is no evidence of the practice of polyandry in the CHT either at the present, or in the past.

¹¹⁹ Roy (2000a: 145).

¹²⁰ Roy (2000a: 142-148). See also, Roy (2005a: 8, 9).

¹²¹ Aung Shwe Prue Chowdhury v. Kyaw Sain Prue Chowdhury & Others (50 DLR, AD, 1998, 73).

¹²² The meeting was held in Chittagong city on 14 October 2008 and convened by about eight organizations of CHT indigenous people based in Chittagong city, including the Arjo Oikko Parishad, Borgaang Pahari Bouddha Parishad, the Chengi Samiti.

¹²³ The head of the commission is a retired judge of the High Court, another member is the Commissioner of the Chittagong Division (a senior civil servant), and the other seven members are the chairperson of the CHT Regional Council, the chairpersons of the three hill district councils and the three *rajas* or circle chiefs.

forest land and seasonally cultivable plough lands of the Karnafuli reservoir area known as “fringelands”.¹²⁴ Moreover, the office of chairperson of the commission is also vacant, due to the death during office of the last incumbent, Mr. Justice Mahmudur Rahman. The newly-elected Government is actively considering the appointment of a new chairperson of the commission.¹²⁵

The CHT Regional Council has put forward its proposed recommendations to successive governments, including to the interim Caretaker Government of Bangladesh in 2008. In November 2008, the Ministry of CHT Affairs forwarded the recommendations of the CHT Regional Council to the Ministry of Land, so that the latter could place the matter before the Advisory Council of the Caretaker Government for legislation.¹²⁶ For reasons that are beyond the scope of this paper to discuss, the amendment did not come through, despite a clear understanding on the issue between the CHT Regional Council and the Ministry of CHT Affairs.

After the present Awami League-led *Grand Alliance* government came into power, a number of developments suggest that the desired amendments might be brought about soon. These include public statements of the present Minister-of-State for the CHT Affairs Ministry, Dipankar Talukdar, MP ¹²⁷ and the Law Minister, Barrister Shafique Ahmed, among others.¹²⁸

In the event that amendments proposed by the CHT Regional Council are accepted by the government and passed into law, the following positive changes would be effected: (i) the work methods of the commission would become more inclusive and participatory (by removing the virtual veto powers of the commission's chairperson and by providing him a casting vote only in the event of a tie), (ii) the uncertainties over the jurisdiction of the commission would be clarified (by redefining “fringelands”, for example), (iii) the workload of the commission would be lightened through delegation of primary investigation and enquiry (except final decision-making) to members or officials of the commission, and so forth. However, even if the commission does start its work in the next year or so, it is feared that it may yet take several years before all the concerned disputes before the commission are resolved, on account of evidential difficulties, time constraints, the unavailability of class actions under Bangladeshi law, and other such factors.¹²⁹ Nevertheless, if the commission were to start its work soon, this would remove one of the most important obstacles towards peace-consolidation and justice in the CHT. It may arguably also be a unique example of restitution and justice in land disputes involving indigenous peoples worthy of being replicated elsewhere in the world. This would be in conformity with the spirit of the UN Declaration on the Rights of Indigenous

¹²⁴ Goutam Kumar Chakma, member, CHT Regional Council – in several discussions with the author, including in June, 2006 – stated that the Government of Bangladesh had at one stage of negotiations agreed to amend the law as advised by the CHT Regional Council, but had backtracked on account of lack of coordination among the government ministers attending the concerned meetings. See also, Adnan (2004: 178).

¹²⁵ Telephonic interview with Dipankar Talukdar, MP, State Minister, Ministry of CHT Affairs, Dhaka, 20 March, 2009.

¹²⁶ By DO Number Pachbim (Pro)-Land Commission Establishment-137/2003-159 dated 02/11/2008, this author in his capacity as the State Minister for CHT Affairs requested the Adviser (minister), for Ministry of Land, A. F. Hassan Ariff, to initiate steps to pass an ordinance to amend the Land Commission law in accordance with the advice provided by the CHT regional Council.

¹²⁷ “CHT Land Commission to be recast, says State Minister”, *Daily Star*, Dhaka, 26 January, 2009. Talukdar is cited as saying “The Land Commission will be reformed through the ministry concerned for permanent solution to the longstanding land problems”. Minister Talukdar made similar remarks at a reception accorded to him and the other two MPs from the CHT (Bir Bahadur from Bandarban and Jatindra Lal Tripura from Khagrachari), along with the lone member of the National Human Rights Commission from the CHT, Dr. Niru Kumar Chakma (Professor of Philosophy at the University of Dhaka) by indigenous people resident in Dhaka at Sakyamuni.Vihar, Mirpur, Dhaka on January 2009, attended by this author (who presided over the function)

¹²⁸ “Govt to recast CHT Land Commission: says law minister”, *Daily Star*, Dhaka, 18 February, 2009.

¹²⁹ For a detailed discussion of the manifold challenges that the commission will have to face in dealing with its work, see: (i) Roy (2000c: 40, 41); (ii) Roy (2002a: 33, 34); (iii) Adnan (2004: 177-180).

Peoples, which provides elaborate provisions on recognition of traditional land rights, restitution of alienated lands and a fair and inclusive manner of providing redress for land-related disputes, among others.¹³⁰

4.5.2. *The CHT Regulation (Amendment) Act of 2003*

The CHT Regulation (Amendment) Act of 2003 (Act XXXVIII of 2003) deals with the transfer of jurisdiction over the administration of civil and criminal justice – formerly vested upon civil servants at the district and divisional levels – to judicial officers under the *Ministry of Law, Justice and Parliamentary Affairs*. This does not affect the existing functions of the traditional chiefs and headmen in dispensing justice on tribal customary laws, which have been expressly excluded from the jurisdiction of the new courts (“except the cases arising out of the family laws and other customary laws of the tribes of the districts of Rangamati, Khagrachari and Bandarban respectively which shall be triable by the Mauza Headmen and Circle Chiefs”).¹³¹ Furthermore, these courts are obliged to try matters in accordance with “laws, customs and usages of the districts concerned”, a clear and formal acknowledgement of customary law and practice, apart from personal laws of the indigenous peoples. This law, which was passed in 2003, was finally put into effect in August, 2008, during the tenure of the caretaker Government of Bangladesh. This positive development came about both on account of the goodwill of the caretaker administration, but also, most importantly, on account of a judgment of the Supreme Court of Bangladesh (High Court Division) in a Public Interest writ petition filed in 2008, which instructed the government to put effect to this law, which was passed way back in 2003.¹³²

V. CONSTITUTIONAL PROVISIONS AND INDIGENOUS PEOPLE IN BANGLADESH

5.1. Constitutional Provisions during British & Pakistani Rule

Most of plains Bangladesh became a part of the British East India Company's territory by the mid-1760s.¹³³ The CHT, however, was not annexed to Bengal until 1860. It became a British tributary after the defeat of the Chakma king at the hands of the Company's forces, in 1787, ending a decade-long guerrilla war.¹³⁴ Since the early part of British rule in South Asia, areas inhabited by indigenous people were administered under special constitutional dispensations. Laws applicable to other areas were considered to be too complex to be suitable for these areas, and hence they were generally administered through special regulations that left the day-to-day administration in the hands of traditional chiefs and sub-chiefs, with supervisory authority being reserved for the colonial authorities, and exercised through residents, agents, superintendents or district officers (deputy commissioners). In-migration of non-indigenous people, and trading and money-lending by non-indigenous people, were strictly regulated. These special laws included the Inner Line Regulation, 1873, the Scheduled Districts Act, 1874, the Chin Hills Regulation, 1896 (Regulation V of 1896), the Government of India Act, 1915, and lastly, the Government of India Act, 1935.

Under the Government of India Act, 1915 (as amended in 1919), the CHT, like other similar areas in British India, was regarded as a “backward tract”. This designation was changed to “excluded area” in the Government of India Act, 1935. The 1935 Act functioned as the provisional constitution of Pakistan until its first constitution was adopted in 1956. The 1956 Constitution of Pakistan retained the ‘excluded area’ status of the CHT and other such areas, but changed the denomination to “tribal area” in the following constitution, known as the Pakistan Constitution of

¹³⁰ See, articles 25 to 30 of the UN Declaration on the Rights of Indigenous Peoples, along with related preambular paragraphs.

¹³¹ Section 4(4), CHT Regulation (Amendment) Act, 2003 (Act XXXVIII of 2003). It states clearly that the judges' jurisdiction would exclude the functions carried out by the chiefs and headmen, which is clarified by the phrase “except the cases arising out of the family laws and other customary laws of the tribes of the districts of Rangamati, Khagrachari and Bandarban respectively which shall be triable by the Mauza Headmen and Circle Chiefs”.

¹³² The Chief Adviser of the interim caretaker Government of Bangladesh pledged his commitment to reforming the justice system in the CHT at a public meeting in Rangamati on . The writ petition - PROVIDE DETAILS FROM PRATIKAR.

¹³³ Majumdar et al (1967: 661-668).

¹³⁴ Serajuddin (1968: 53-60); Chakraborty (1977: 133-156); Ishaq (1975: 35).

1962. However, through a constitutional amendment in 1963 – through the Constitution (First Amendment) Act, 1963 – the name of the CHT was excluded from the list of tribal areas. Since then the special constitutional status of the CHT has never been revived. One of the direct impacts of this was the striking down, in 1964, of a CHT law, that was found by the High Court of East Pakistan to be contrary to the freedom of movement clause of the then constitution.¹³⁵ More recently, the constitutionality of the CHT Regional Council Act of 1998 and the Hill District Councils laws of 1998, and even the constitutionality of the CHT Accord of 1997 itself, have been challenged in the High Court, and the hearings on the matter are yet to be concluded.¹³⁶

An 'excluded area' (and later, a tribal area) denoted an almost exclusively tribal-inhabited area, where general laws and regulations were very sparingly applied, and whose administrative features were unique to the territory. A 'partially excluded area', on the other hand, denoted a comparatively mixed, but still predominantly tribal-inhabited territory, whose administrative system was more integrated into the regular administration of the province (than was the case with excluded areas), and a higher number of laws of general application were allowed to function therein. Under the Government of India Act, 1935 and the Pakistan Constitution of 1956, the CHT formed part of an excluded area, while the areas of Sribardi, Nalitabari, Haluaghat, Phulpur, Durgapur and Kalmakanda in the greater Mymensingh region were recognized as 'partially excluded areas'.¹³⁷ However, when the former excluded areas were re-designated as 'tribal areas' in the 1962 Constitution of Pakistan, the former partially excluded areas of Mymensingh were not included in the tribal areas list, unlike the CHT (but which too lost this status in 1964). In India, most of the former excluded areas – for example in parts of Northeast India, such as in Arunachal Pradesh, Meghalaya and Mizoram - became autonomous district or regional council areas with legislative authority under the 6th Schedule to the Constitution of India (within their respective states, now controlled by the indigenous people) while most partially excluded areas – such as in Jharkhand and Chattisgarh states and in other parts of peninsular India - became specially administered areas under the 5th Schedule, where legislative authority is vested upon the provincial governor with the assent of the President.¹³⁸ The provisions of the 5th Schedule areas are compatible with the provisions of Conventions No. 107 (especially article 27) and 169 (especially article 33), but some of its provisions, and particularly, several provisions of the 6th Schedule - which recognize the wide-ranging autonomous authority of district and regional councils over legislation, administration of justice, land and development, among others - go beyond the ILO Conventions No. 107 and 169, and are closer to those of the UN Declaration on the Rights of Indigenous Peoples. The relevant provisions of the Declaration include those on *self determination, autonomy* and the *maintenance of indigenous peoples' juridical and other institutions* (respectively articles 3, 4 and 5, and 34), *participation* (especially articles 18 and 19), *development* (articles 20, 21, 23) and *land* (articles 25-30), among others.

5.2. The 1972 Constitution & Demands for Constitutional Recognition

At the time of Bangladesh's independence from Pakistan in 1971, the excluded area status of the CHT and the partially excluded area status of indigenous-inhabited parts of greater Mymensingh had not been revived. In 1972, before the national constitution was adopted, the late leader of the JSS and Member of Parliament from the northern CHT, M. N. Larma, demanded the revival of the special constitutional status of the CHT and formal

¹³⁵ *Mustafa Ansari v. DC, CHT & Another* (7 DLR, 1965, 553). This law – rule 51 of the CHT Regulation – allowed the Deputy Commissioner to expel a 'non-native' from the CHT if his presence was considered to be "injurious to the peace or good administration of the district"

¹³⁶ Writ Petition No. 4113 of 1999 (*Shamsuddin Ahmed v Government of Bangladesh and Others*) and Writ Petition No. 2669 of 2000 (*Mohammed Badiuzzaman v Government of Bangladesh and Others*) in the Supreme Court of Bangladesh (High Court Division). The first-named case has reportedly been closed due to the death of the petitioner, sometime in 2005.

¹³⁷ Khan (1978: 59).

¹³⁸ For further details of the administration of the 5th & 6th Schedule areas in India, see Basu (1991: 268, 269, 429-438, 457-474).

constitutional recognition of the hill peoples and other indigenous peoples.¹³⁹ The demand was rejected and Larma was advised to join the mainstream of Bengali nationalism.¹⁴⁰ Since then, again from 1992 onwards, when the *International Year of the World's Indigenous People* was celebrated in different parts of the world, and in Bangladesh, more and more voices could be heard demanding the formal recognition of the Adivasi and hill peoples in the national constitution.¹⁴¹ During the time of the eighth parliament led by the BNP, the Member of Parliament from Rangamati district, Mani Swapan Dewan, is known to have raised the issue of constitutional recognition in parliament, after a gap of more than thirty years.¹⁴² Now, with the landslide victory of the Awami League-led *Grand Alliance*, which has the requisite two-thirds majority to make constitutional amendments, the issue of constitutional reforms becomes alive again.. At a public meeting in Dhaka in January 2009, the CHT Affairs State Minister Dipankar Talukdar, MP pledged his support for constitutional recognition of the formal status of indigenous peoples as "Adivasi".¹⁴³

5.3. Implementing the Equal Rights & Anti-Discrimination Clauses of the Constitution

Despite the fact that there is no direct mention of the indigenous peoples of Bangladesh in the national constitution, there are a number of provisions in it that are of direct relevance to their rights. Many of these provisions are of concern to the indigenous peoples on account of their situation of disadvantage, under the generic description of "backward section of citizens".¹⁴⁴ The reference to the *backward section of citizens* occurs both in Part II - which declares the *Fundamental Principles of State Policy* (particularly, article 14, and also, article 19) - and in Part III - which lays down the *Fundamental Rights* (particularly, articles 27, 28 and 29). These provisions have three distinct, but related, implications, among others, for the rights of indigenous peoples. Firstly, they totally outlaw discrimination based on race, religion etc. (a situation that indigenous peoples in Bangladesh, as elsewhere, have continually suffered from), drawing upon anti-discrimination provisions of the *Universal Declaration of Human Rights*. Secondly, they urge the Bangladeshi state to take *affirmative action* for the welfare of its disadvantaged groups. Thirdly, these provisions protect those affirmative acts of the state that might otherwise amount to discrimination.¹⁴⁵ These provisions are clearly of the nature that are contemplated by article 3 of Convention No.107, which concerns special protective measures in order to ensure that the disadvantaged situation of indigenous and tribal people does not prevent them from enjoying the benefits of the general laws of the country. Article 3 also clarifies that these protective measures should not prejudice the enjoyment of general rights of citizenship that are available to indigenous and tribal people as citizens of the country concerned.

There is no doubt that the direct, respectful and unequivocal recognition of the status and cultural identity and integrity of all the peoples of Bangladesh is important, not the least, to correctly reflect the country's multicultural

¹³⁹ Parliamentary Debates (25.10.1972: 292-295; 31.10.1972: 452) of 25 and 31 October, 1972 as cited in Mohsin (2002: 62).

¹⁴⁰ Mohsin (2002: 62).

¹⁴¹ 9-point demands of the *Jaitiyo Adivasi Parishad* in "Bhumi Barta", Bulletin No. 4, Association for Land Reform and Development, Dhaka, May, 1996, pp. 6, 7., *Adivasi Declaration of 1997* (which resulted from the First Round Table Conference of Indigenous Peoples of Bangladesh, December, 1997), Roy (2005b). See also, *Daily Prothom Alo, Dhaka*, of 24.11.2000, and the Editorial of 02.04.2001.

¹⁴² Statement of Mani Swapan Dewan, then MP and Deputy Minister, Ministry of CHT Affairs, speaking on a discussion on the budget in parliament on 28 June, 2006, as reported in the *Daily Suprobhat Bangladesh*, Dhaka, 29 June, 2006 (cover page and page 2).

¹⁴³ Reception accorded to CHT MPs and the CHT-born member of the National Human Rights Commission at Sakyamuni.Vihar, Mirpur, Dhaka on January 2009.

¹⁴⁴ Comparable provisions in the Constitution of India refer to "socially and educationally backward class of citizens" [Article 15(4)] and to "backward class of citizens" [Article 16(4)]. It is noteworthy, however, that while the Bangladesh constitution refers only to the "backward" citizens, the Indian constitution also mentions "scheduled castes" and "scheduled tribes". See, for example, Basu (1991: 29-36, 94).

¹⁴⁵ See, for example, article 1(4) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD: ratified by Bangladesh) that similarly protects affirmative acts from themselves amounting to discrimination sought to be eliminated by the convention.

composition and heritage in the constitution. It is to be hoped that the situation will be corrected through amendment in future. However, further delays in implementing existing constitutional provisions in the hope of improving upon existing constitutional provisions has the risk of subjecting the already disempowered and marginalized indigenous peoples of the country to further exclusion beyond a point after which remedial action will become meaningless. It is of the utmost importance therefore, to proactively promote the implementation of the existing provisions of the constitution that favour indigenous peoples' rights, rather than concentrate solely upon achieving some sort of formal constitutional recognition of the status of the indigenous peoples. The provisions on equal opportunity in public employment (Article 29(4)), for example, provide a clear case of under-implementation, if not non-implementation. Administrative reforms to enable indigenous peoples to substantively participate in decision-making processes on state employment matters – such as in the *Public Service Commission* - could help remedy the situation to a great extent. Many other such steps could be taken to advance affirmative action programmes for situations already accounted for in the present constitution, and strongly supported, in the case of the CHT, by its special legal and administrative system. The aforesaid constitutional provision is compatible with article 15 of Convention No. 107 and several of the provisions of ILO Convention No. 111.

VI. OVERVIEW OF GOVERNMENT POLICY ON INDIGENOUS PEOPLES

This report focuses primarily on Bangladeshi laws vis-à-vis the provisions of the ILO Convention No. 107. However, laws and policies generally go together, and in order to understand the implications of various laws, it may be necessary to also look at the related formal and informal government policies on indigenous issues. This chapter therefore provides a bird's eye view of government policy on indigenous issues.

The Government of Bangladesh has no formal and detailed policy as regards the indigenous peoples of the country in any single document. This is a result, primarily, of the longstanding tradition of the major Bangladeshi political parties not having detailed policies on indigenous issues themselves. Thus the government's policy towards its indigenous peoples has to be gleaned from laws and practices followed by successive governments and by identifying provisions of the sectoral policies – e.g., on Education, Health, etc. – and Poverty Reduction Strategy Papers, where they deal with indigenous peoples expressly or on account of default, i.e., policy neglect in not having express provisions where such are relevant. The most important of the applicable constitutional and other laws have been referred to in the preceding chapters (chapters III, IV and V). This chapter will provide a broad overview of important elements of the government's policy towards the indigenous peoples, (i) by analyzing the impact of the government's major programmes on governance, development and resource rights issues in the plains regions; (ii) by looking at the state of implementation of the CHT Accord of 1997; (iii) by an overview of major sectoral policies; and (iv) by attempting to understand the implications of the *Poverty Reduction Strategy Papers* ("PRSP-I" and "PRSP II").

It is important that the development policy of the Government of Bangladesh concerning its indigenous population is understood within the context of the government's responsibilities under Convention 107. In other words, where such policy falls below the standards mentioned in the aforesaid Convention, it is incumbent upon all concerned to attempt to raise the policy to meet the standards of the Convention. Most of the provisions of the Convention are relevant to the arena of development. In particular, the provisions on *protective governmental action* (article 2), *education* (articles 6, 21- 26), *land* (articles 11-14), *recruitment and conditions of employment* (article 15), *vocational training, handicrafts and rural industries* (articles 16, 17, 18) and *social security and health* (articles 19, 20) are directly relevant to account for in adopting and implementing a development policy for indigenous peoples.

6.1. Government Programmes affecting Indigenous Peoples in the Plains Regions

Policy neglect concerning land alienation issues is among the areas of the highest concern for indigenous peoples of the plains, including in the case of the "eco park" project in the Mandi-inhabited Madhupur forest area, the

“national park” project in the Khasi-inhabited parts of Maulvibazar district, and the eviction of Santal people in Dinajpur district in the name of “social forestry”.¹⁴⁶ To this may be added the threatened eviction of indigenous people in Dinajpur district for a coal mining venture of a multinational company. Demands for resolution of the land dispossession problems through a Land Commission for the plains, and for reservation of seats in the national parliament and in local government bodies, has grown in recent years.¹⁴⁷ Another major area of concern has been the continued exclusion of the plains indigenous peoples from decision-making processes of the *Special Affairs Division*, the premier national-level institution that deals with Adivasi issues of the plains. Although the existence of the *Special Affairs Division*, and the broad ambit of the Division’s scope of work are consistent with article 27 of Convention No. 107 - which concerns the creation or development of development agencies, and relevant legislative and supervisory measures – the absence of participation of representatives of the peoples concerned is contrary to the provision of article 5 of the Convention, which concerns the participatory rights of indigenous people (*participation and collaboration*). Such policy neglect is also contrary to several provisions of the Constitution of Bangladesh, including those on equality and equal opportunity (articles 27, 28). Partly as a solution to the problem of non-participation in the affairs of the aforesaid Division, Adivasi leaders have demanded the establishment of a separate Ministry of Adivasi Affairs.¹⁴⁸ Many of these mobilization efforts have become more organized and united than ever before, but have failed to so far translate into the required governmental action. Nevertheless, the positive feature of these developments is that these issues are becoming mainstreamed, through reasonably generous coverage in the national media, and provide some hope of remedial action in the near future.¹⁴⁹ In the context of the recent parliamentary elections, which brought in four indigenous members and about an equal number of ethnic Bengali members publicly committed to indigenous or Adivasi issues, there is reason for some hope.¹⁵⁰

6.2. The Quota Policy

The Government of Bangladesh has a policy of affirmative action to reserve positions in government service and in a number of medical and engineering institutions for members of “tribes”. Similarly, semi-government and autonomous universities and a number of other educational institutions also offer quotas for admission. Thus, 5% of government jobs are to be reserved for tribals.¹⁵¹ However, in practice the due positions are not offered to indigenous candidates, especially where the number of vacancies are small and the indigenous candidates lose out with the arithmetic of fractions. With regard to high positions in government, 2009 saw a marked improvement with the highest number of indigenous appointees, including in the coveted Ministry of Foreign Affairs. However, whether such a trend can be maintained will depend on whether the system of appointment by the Public Service Commission is adequately monitored to ensure fairness.¹⁵² In comparison, the reservation system for lower grade

¹⁴⁶ IWGIA (2005: 382, 383), IWGIA (2006: 368, 369), Mankin (2004: 25-31).

¹⁴⁷ Daily *Prothom Alo*, Dhaka, 30.04.2005.

¹⁴⁸ Daily *Prothom Alo*, Dhaka, 26.03.2006. In a meeting on 29 March 2009, the author brought this matter to the notice of Prime Minister Sheikh Hasina, at her office. Hasina agreed to look into the matter and expressed her goodwill to work for the welfare of the different peoples in the CHT and in the plains.

¹⁴⁹ IWGIA (2006: 367).

¹⁵⁰ A recently reconstituted international civil society human rights watchdog body known as the International Chittagong Hill Tracts Commission met Prime Minister Sheikh Hasina (see *Daily Star and New Age* of 19 February, 2009) and several members of the cabinet, CHT leaders and the Chief of Army Staff, General Moeen U. Ahmed, and sought the government’s cooperation to improve the human rights situation in the CHT. Their suggestions included the following. It is alleged that the government leaders responded positively to their suggestions. See, for example,

¹⁵¹ All three MPs from the CHT Jatindra Lal Tripura (expected to be appointed as Chairman of the Task Force on Refugees and Displaced People), Bir Bahadur (also Chairman, CHT Development Board) and State Minister Dipankar Talukder, Ministry of CHT Affairs, have publicly expressed their commitment to implement the CHT Accord. See, the *Daily Star*, Dhaka issues of 1 January, 2009 (for Tripura), 2 January, 2009 (for Bahadur) and 30 January, 2009 (for Takukder).

¹⁵² From Shafiur Rahman, Secretary, Ministry of Establishment, Government of the People’s Republic of Bangladesh, Rule-1 Section, to Cabinet Secretary et al, vide Memo No. Sha Ma (Bidhi-1)-S-8/95 (Angsha-2)-56 (500) dated 17.03.1997, Chakma Raja’s Archives, Rangamati.

posts with primacy to tribal candidates in the CHT, particularly in the Hill district councils, works much more efficiently. This also has the formal sanction of the government.¹⁵³

Unlike in the case of jobs, the problems in the quota for admission into tertiary-level educational institutions has been far more transparent and fair, but here the problem is not so much of policy implementation, but the inadequate number of seats so offered. Both in the case of jobs and admission to educational institutions, the most extensive system of affirmative action in the world is perhaps practised in India for “scheduled castes”, “scheduled tribes” and “other backward classes”, championed in the 1950s by the renowned low caste jurist, Dr. B. R. Ambedkar.

6.3. The CHT Accord of 1997 and its Implementation¹⁵⁴

The CHT Accord of 1997, ended twenty-five years of political unrest and a guerrilla war in the region, and sought, among others, to strengthen the CHT self-government system. The agreement resulted in the passage of a number of laws, including the *CHT Regional Council Act of 1998*, the *Hill District Council (Amendment) Acts of 1998*, the *CHT Land Disputes Resolution Commission Act of 2000* and the *CHT Regulation (Amendment) Act of 2003*. It also resulted in the establishment of three new bodies: a regional council for the CHT, a separate ministry to deal with affairs of the CHT region,¹⁵⁵ and a *Commission on Land* to resolve land-related disputes. Immediately after its signing, it was hailed nationally and internationally, and the then prime minister (who is also the incumbent prime minister for the second time) even received a peace prize from UNESCO. On the other hand, there were those who condemned the agreement. One of these was a faction of indigenous student and youth groups hitherto allied to the JSS – now known as the United People’s Democratic Front (‘UPDF’) – who rejected the Accord as being too weak on autonomy and constitutional safeguards.¹⁵⁶ On the side of the Bengali community living in the CHT, initially, large sections of its population looked upon the agreement with suspicion, fearing that it would undermine their rights and interests.¹⁵⁷ Gradually, a growing number of Bengalis, particularly descendents of the Chittagonean-speaking agricultural migrants of the 19th century, started to align themselves with indigenous people supporting the agreement.¹⁵⁸ Recently, in their pre-election manifesto, the UPDF openly expressed its support for the implementation of the Accord. Similarly, the manifesto of the Bangladesh Awami League - to which all three MPs from the CHT belong, and which is the ruling party in government – also supported the implementation of the Accord.¹⁵⁹ These developments show new alignments that favour the peace process that was initiated through the Accord, although many other political and bureaucratic difficulties still stand in the way. In meetings with members of an international human rights watchdog body on the CHT called the CHT Commission, members of the newly

¹⁵² This author in his capacity as the State Minister for CHT Affairs wrote a demi official letter to the Chairman of the Public Service Commission, Dr. Sadat Hossain (vide DO No. Pabchim.../ 2008/56 dated 09 June 2008) requesting fair appointment of indigenous people in accordance with the quota policy. The PSC obliged by appointing the highest number of tribals in Class I jobs for any given year, including one in coveted Bangladesh Foreign Service (only the second indigenous person in the service). In a telephonic conversation with the author in November 2008, the PSC Chairman lamented that indigenous persons did not get their due posts because they did not have enough people to lobby and advocate for them.

¹⁵³ From A. L. M. Abdur Rahman, Senior Assistant Secretary, Ministry of Establishment, Government of the People’s Republic of Bangladesh, Rule-1 Section, to Secretary, Ministry of CHT Affairs, vide Memo No. Sha Ma (Bidhi-1)-SR-1/2000-183, dated 21.10.2000, Chakma Raja’s Archives, Rangamati. See also, Md. Abdul Hannan, Senior Assistant Secretary (Sha Ma-1) to Secretaries, Chairman, CHT Regional Council, Chairmen, Hill District Councils, vide Memo No. Pachobim (Sha Ma-1)-30/2001-529 dated 26.06.2002, Chakma Raja’s Archives, Rangamati.

¹⁵⁴ For a detailed discussion of the issue of non-implementation of the CHT Accord, see Roy (2007) and Roy (2008).

¹⁵⁵ For a description of the major functions of the Ministry of CHT Affairs, see Khan (2004: 4, 5) and Martin (2004: 21-30).

¹⁵⁶ Mohsin (1998: 107), Roy (2003a:16), Roy (2007:123), Roy (2008: 492).

¹⁵⁷ Mohsin (1998), Roy (2003a), Roy (2007:125), Roy (2008: 493).

¹⁵⁸ Roy (2003a: 16, 17), Roy (2007:125), Roy (2008: 493).

¹⁵⁹ In a meeting with members of the international CHT human rights group, Chittagong Hill Tracts Commission, Foreign Minister Dipu Moni pledged the government’s commitment to implementing the CHT Accord of 1997. See, Daily Star, Dhaka, 17 February, 2009.

elected government, including Prime Minister Sheikh Hasina, committed themselves to faithfully implementing the Accord.¹⁶⁰

Despite the fact that the Accord is now an administrative reality, and 'demonization' campaigns against it have visibly weakened, its follow-up process was seen to run into several difficulties, especially during BNP-led rule from 2001 to 2006, when the process of devolution of authority to CHT institutions was almost halted.¹⁶¹ Among the major provisions of the Accord that remain unimplemented or under-implemented are the dismantling of temporary military and para-military camps, rehabilitation of the internally displaced, resolution of land disputes, and the transfer of law and order, and authority to recruit local police, to the hill district councils.¹⁶² Although the constituent parties of the former BNP-led coalition government had opposed the accord when they were in opposition, and had even threatened to repudiate the agreement, once they were part of the government, they were forced to deal with the institutionalized creations of the accord (e.g., the CHT Regional Council and the Ministry of CHT Affairs). For example, in May, 2006, the BNP-led government transferred authority over Youth, Textile and Vocational Training institutes to the hill district councils.¹⁶³ Therefore, although a detailed scrutiny of the agreement shows large gaps in implementation, especially in the period when the BNP-led alliance was in power, it can be said that on the whole, the accord has achieved a level political, if not constitutional, entrenchment, by default, if not by design.

6.3. The National Poverty Reduction Strategy Paper (PRSP-I and PRSP-II)

6.3.1. *The PRSP – I*

Published in October, 2005, the first *National Poverty Reduction Strategy Paper* of Bangladesh ("PRSP-I"), displays, in contrast to other developments in recent years, a respectful approach towards the rights and welfare of indigenous peoples. The term used to refer to the indigenous peoples is "Adivasi/Ethnic Minority", which is far more acceptable to the people concerned, than 'tribal' or 'upajati'. The document acknowledges the indigenous peoples' history of exclusion and experience of discrimination, among others.¹⁶⁴

The PRSP-I refers to the "inadequate representation [of Adivasi/Ethnic Minorities] at various levels of government and policy processes", hampering their possibility of influencing policy decisions that affect their lives.¹⁶⁵ In

¹⁶⁰ For press coverage of the visit of the CHT Commission and their meetings with the prime minister and other ministers and officials of the government, see the *Daily Star, Dhaka* of 17, 18, 19, 23 and 27 February, 2009 and the *New Age, Dhaka* of 17, 19 and 23 February, 2009. The commission is co-chaired by Lord Eric Aveybury (member, House of Lords, UK), Advocate Sultana Kamal (human rights leader) and Ida Nicolaisen (member, UN Permanent Forum on Indigenous Issues). Its other members include Victoria Tauli Corpuz (chairperson, UN Permanent Forum on Indigenous Issues), Dr. Shapan Adnan (academic), Dr. Zafar Iqbal (academic), Barrister Sara Hossain (jurist), Dr. Mehghna Guhathakurta (Adviser), Tom Eskilden (resource person) and Jenneke Arens (resource person).

¹⁶¹ Larma (2003), Roy (2003a).

¹⁶² For further details of the process of implementation, see the aforesaid writings of Larma (2003), Mohsin (1998, 2003), the present author's article on the accord [Roy (2003a)], and two forthcoming articles on the accord by this author, to be published in 2006 by IWGIA, Copenhagen, and by KREDDHA (International Peace Council for States, Peoples and Minorities).

¹⁶³ The *Daily Prothom Alo*, Dhaka, 01.05.2006.

¹⁶⁴ Paragraph 5.1., states the following: "Over the years the adivasi/ethnic minority communities have been made to experience a strong sense of social, political and economic exclusion, lack of recognition, fear and insecurity, loss of cultural identity, and social oppression. Mainstream development efforts have either ignored their concerns and/or had a negative impact on them. Often issues and actions that affect them are not discussed with these communities or organizations representing them. Thus they are subjected to stark socio-economic deprivation. Mass relocation of non-ethnic minority people in the traditional adivasi/ethnic minority areas caused land-grabbing, leading to livelihood displacement among the adivasi/ethnic minority people."

¹⁶⁵ Paragraph 5.405, PRSP, 2005 (PRSP-I).

addition, it acknowledges their comparatively low opportunities in education (especially in remote areas),¹⁶⁶ and their difficulties in accessing necessary information.¹⁶⁷ Among the “actions to be taken” that it recommends are the full implementation of the CHT Accord, activation of the *CHT Land Commission* and the *Task Force on Refugees*, resolution of land and forest-related problems in the plains (particularly the “Eco Park”), prevention of ‘land grabbing’ and ‘displacement’, increasing access to education, including in the mother tongues of the groups concerned, affirmative action for jobs, and the formation of an inclusive advisory body to advise on matters pertaining to Adivasi issues, including at the *Special Affairs Division*, which deals with Adivasi affairs of the plains.¹⁶⁸

The primary drafts of the PRSP contained hardly any matters of substance concerning indigenous issues. After intense lobbying by indigenous activists, the cooperation of the consultants concerned, and the cooperation of senior officials of the Planning Commission and the Prime Minister’s Office, extensive consultations were held with indigenous leaders from the plains regions and the CHT.¹⁶⁹ Many of the recommendations of these leaders were accepted. The proposals that were not accepted included the identification of the Ministry of CHT Affairs and the Special Affairs Division as focal institutions, and a number of other matters that would have provided more details in the matrices section.

It was hoped that this would help integrate and mainstream Adivasi issues into the general development programmes of the Government of Bangladesh. The proposals also demanded a role for indigenous peoples in implementing and monitoring the document.¹⁷⁰ The acceptance of the aforesaid recommendations would have strengthened the document and its operational context, but the PRSP-I as it stood then was nevertheless an important tool to further the rights of the indigenous peoples of Bangladesh. The latter part of the consultation process on the PRSP was also an example of a positive and reasonably fruitful dialogue between indigenous leaders and government officials. It was hoped that this would show the way towards other cooperative indigenous-government dialogues in the near future. This would also be in accordance with the fundamental concepts of ‘participation’ and ‘consultation’ as a cornerstone of ILO policy on indigenous peoples, whose basis was provided in article 5 of Convention 107, supplemented with recommendation no. 37 of ILO Recommendation No. 104, and elaborated further in articles 6, 7 and 33 of Convention No. 169, and several recent resolutions of the International Labour Conferences.

6.3.2. *The PRSP – II*

Although PRSP-I was a landmark improvement in government policy as regards indigenous issues, PRSP-II provides further entrenchment of the importance of indigenous issues in governance and poverty reduction. In the first place, the phrase “indigenous people” is used interchangeably with “indigenous communities” (PRSP-I referred to “Adivasi/Ethnic Minority”). Secondly, PRSP-II includes a vision statement that acknowledges the preservation of the “social and cultural identity” of the indigenous peoples, and the need to ensure the exercise of the indigenous peoples’ “social, political and economic rights” and their “security and fundamental human rights”.¹⁷¹ Thirdly, in the

¹⁶⁶ Paragraph 5.406, PRSP, 2005 (PRSP-I).

¹⁶⁷ Paragraph 5.407, PRSP, 2005 (PRSP-I).

¹⁶⁸ Paragraph 5.408, PRSP, 2005 (PRSP-I).

¹⁶⁹ Supportive roles were played in this process by Dr. Kamal Siddiqui, Principal Secretary to the Prime Minister, Dr. Mesbahuddin, Member, Planning Commission and consultants Dr. Kaniz Fatema and Dr. Hossain Zillur Rashid (later Adviser for Education and Commerce, Catretaker Government of Bangladesh). UNDP, Dhaka played a facilitative role, including proactive advocacy by Kirti Nishan Chakma and leaders of the Movement for the Protection of Forest and Land Rights in the CHT and Taungya. The author was present at the formal consultations with indigenous peoples and later formally presented the recommendations of the indigenous representatives through a letter addressed to the Principal Secretary dated [redacted].

¹⁷⁰ IWGIA (2006: 367). See also, Tomei (2005: 29, 30) and Daily *Prothom Alo*, 30.04.2005.

section on future actions to be undertaken by the Government, in addition to reiterating the importance of implementing the unimplemented provisions of the CHT Accord of 1997 (the PRSP-I referred to “full implementation” of the Accord), PRSP-II mentions the ratification of ILO Convention No. 169 and the implementation of the provisions of the UN Declaration on the Rights of Indigenous Peoples.¹⁷² Other important matters for action include land rights, participation in development programmes affecting indigenous peoples, human development, empowerment of indigenous communities, indigenous peoples’ languages and children’s access to education, access to electricity, and the mainstreaming of indigenous issues in national policies, including for the key ministries of Land, Agriculture, Education, Primary and Mass Education, Health, Local Government, Rural Development & Cooperatives and Social Welfare.¹⁷³ In the section on *Challenges*, the document acknowledged the absence of census and other statistical data on indigenous peoples.¹⁷⁴

The process of consultation in the case of PRSP-II was arguably far less inclusive than was the case with PRSP-I. However, what is of importance for the indigenous peoples of Bangladesh is that one of the three formal consultations were held in Rangamati, the headquarters of the CHT, and that the word indigenous people has found its way into a formal government document again.¹⁷⁵ Another crucial difference between PRSP-I and PRSP-II as it concerns indigenous peoples is that the provisions of PRSP-II on indigenous peoples are now anchored to two identifiable government institutions, the Ministry of CHT Affairs for the CHT and the Special Affairs Division for the plains, and moreover, the two institutions’ activities are sought to be further mainstreamed into existing and future development programmes of the government, including through other key line ministries. This provides a stronger link to adequate budgetary allocations. However, PRSP-II’s biggest weakness is perhaps the absence of express commitments to make the Special Affairs Division of the Prime Minister’s Office – which deals with budgetary, developmental and other matters of indigenous issues pertaining to the plains districts – more inclusive and participatory for indigenous peoples of the plains, since they have no direct participation at decision-making levels of the Division. This will hopefully be addressed by the newly-elected government.

VII. A GENDER & EQUITY AUDIT OF BANGLADESHI LAWS & POLICIES ON INDIGENOUS PEOPLES

7.1. Equity & Gender

The constitution of Bangladesh contains several provisions that seek to eradicate discrimination against women.¹⁷⁶ Moreover, Bangladesh has ratified the *Convention on the Eradication of Discrimination against Women* (CEDAW), although it has put some reservations, including on the issue of personal laws.¹⁷⁷ Bangladesh has even established a Ministry of Women’s Affairs, but the actual situation of women in the country is far from good. Gender-based discrimination is a common phenomenon in Bangladeshi society, including within the indigenous population of the country (as in various other parts of the world). It has been said that indigenous women are even more marginalized than their non-indigenous counterparts, on account of their multiple situations of disadvantage,

¹⁷¹ PRSP-II, p. 143.

¹⁷² Ibid., p. 144.

¹⁷³ Ibid.

¹⁷⁴ Ibid., p. 145.

¹⁷⁵ The Rangamati consultation was brought about on account of an understanding between the then Finance Adviser, Dr. Mirza Aziz, the then CHT Affairs Ministry’s Special Assistant (who happens to be the author of this report) and Dr. Jafar Ahmed Chowdhury, the then Secretary of the Planning Division, Ministry of Planning.

¹⁷⁶ See, especially, articles 10, 19, 27, 28 and 29.

¹⁷⁷ The reservations are on articles 2, 13(a), 161(c) and 161(f). It is noteworthy that no reservations may be made in the case of ILO conventions.

including "gender, ethnicity and class".¹⁷⁸ Generally, indigenous women in Bangladesh have more social mobility than non-indigenous women, but in terms of inheritance rights and political rights, among others, their situation is said to be little better than that of non-indigenous women, if at all.¹⁷⁹ The problem is compounded by the fact that the prescriptions generally provided or offered by state and civil society actors are based upon "atypical cases of discrimination faced by Bengali women in the plains regions[and hence] not appropriate for preventing discrimination against indigenous women".¹⁸⁰ It has therefore been said that these mainstream concepts on remedial measures – including on an ungendered Family Code and use of special ('Family') courts - need to be amended to fit the situation of Bangladeshi indigenous women from the different ethnic and religious groups.¹⁸¹

Women are severely under-represented in the traditional and largely hereditary institutions of the CHT chiefs (*rajas*), headmen and karbaries.¹⁸² In the plains too, for example, among the Santal and the Oraon, clan leadership is restricted to men.¹⁸³ Even among the matrilineal Garo and Khasi peoples, traditional leadership offices of *Songni Nokma* and *Myntri*, respectively, are generally held by men.¹⁸⁴ In the case of elective offices as well, representation of women is inadequate. For example, only two out of the 16 tribal seats of the CHT Regional Council, and only six out of the 20 tribal seats of each hill district council (when elected councils eventually sit), are reserved for tribal women. Discontent has been particularly high in the case of the interim district councils, which have five members each (including the chairperson), although they are to have a total of 31 members each (including the chairperson) when elections are ultimately held. At the moment, none of the five members of each of the three councils is a woman.¹⁸⁵ Indigenous women have demanded that this situation be corrected by amendments of the law, and have similarly demanded adequate allocation of seats for indigenous women for the reserved women's seats in the national parliament.¹⁸⁶

The situation of indigenous women in the customary personal law systems shows both fair treatment and discriminatory treatment.¹⁸⁷ However, violence in domestic situations is not uncommon. Moreover, discriminatory practices in inheritance, marriage and child custody still continue. Indigenous women in the urban areas of the CHT are becoming increasingly vocal about demands to outlaw polygyny and to achieve equal inheritance and child custody rights.¹⁸⁸ The situation in the plains regions is also a case for concern, and warrants close attention, including strengthening of women's rights networking alliances.

Over the years, more and more indigenous people, particularly women, have started working in cities. The most common occupations are in beauty salons/parlours (mostly Mandi/Garo) and in factories (particularly Chakma). A study on Mandi women in beauty parlours of Dhaka city shows how vulnerable these women are to exploitation. Legal loopholes make them even more vulnerable since such work is considered to be outside the formal sectors,

¹⁷⁸ Halim (2005) in Drong (2005: 69).

¹⁷⁹ Halim (2005) in Drong (2005: 69).

¹⁸⁰ Halim (2005) in Drong (2005:73)

¹⁸¹ Halim (2005) in Drong (2005:73). See also, Halim (2002).

¹⁸² Halim (2004) in Drong (2004:93).

¹⁸³ Halim (2004) in Drong (2004:93).

¹⁸⁴ See for example, Hossain & Rupon (2006) in Rahman (2006: 236).

¹⁸⁵ The sole exception was the chairperson of the Bandarban Hill District Council during the previous BNP-led regime in 2001-2006, Ms. Mya Ma Ching (Lily).

¹⁸⁶ Activists have voiced these demands at several formal meetings in recent years, including at a meeting to observe a day on *Resistance of Oppression against Women* held at Rangamati, CHT on 24 August, 2003.

¹⁸⁷ See for example, Halim et al (2004).

¹⁸⁸ Activists have voiced these demands at several formal meetings in recent years, including at a meeting to observe a day on *Resistance of Oppression against Women* held at Rangamati, CHT on 24 August, 2003.

and therefore outside the full protection of the law.¹⁸⁹ No research is known to have been done on the indigenous women working in garments factories in Chittagong and Dhaka cities. There is little doubt that measures need to be taken to ensure that their rights under Bangladeshi law, and under the Convention No. 107, are adequately protected. Some of these pertinent issues were raised by the *Indigenous Women's Forum* at the Beijing Conference of 1995.¹⁹⁰

Corrective legislative and administrative measures would be in tune with article 15 of Convention No.107, which seeks, among others, to prevent discrimination between indigenous and other workers. Absence of necessary protective measures for indigenous women workers, therefore amounts to substantive, if not procedural, inequality. This is also contrary to the provisions of CEDAW, and provisions of the Constitution of Bangladesh on grounds of discrimination based on gender.¹⁹¹

7.2. Equity & Ethnicity

Despite sharing the same generic identity of indigenous, Adivasi, 'tribal' or otherwise, the situation of the different indigenous peoples in terms of political, economic, and social empowerment, or disempowerment, as the case might be, is varied and unequal. The groups with the smaller populations generally tend to be more politically marginalized than the more numerous groups, since their electoral strength is too small to enable them to get their own people elected to office. This is so both in the plains and in the CHT. In the case of the plains, only a few of the aboriginal peoples have been recognized through the East Bengal State Acquisition & Tenancy Act, 1950. Hence those that have not been so recognized are liable to be deprived of the protection offered by the 1950 land law. This may also mean that they will be deprived of economic programmes through the *Special Affairs Division*, which is responsible for overseeing development programmes for the plains indigenous people. There are other instances of discrimination, and exclusion of Adivasis from their due recognition, as mentioned earlier in section 2.2 above.

In the case of the CHT, official recognition is not a problem for the indigenous peoples that were previously recognized through the CHT Regulation, 1900.¹⁹² However, there is discontent among *some* of the indigenous peoples with small populations because they have not been provided direct representation in the CHT Regional Council. In the case of the hill district councils too, representation of the peoples with small populations has in some instances been indirect or otherwise inadequate.¹⁹³ This situation needs to be addressed in an equitable manner. For the time being, the regional and district councils could bring about a consultative process to ensure that the representatives of all the indigenous peoples and communities are able to have a say in the major decision-making processes affecting them. This is also important because all the indigenous peoples are not adequately represented in the 'traditional' system of raja or chief, headmen and karbari either. Any such measure, as suggested above, would be consistent with provisions of Convention No. 107 and the Constitution of Bangladesh.

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¹⁸⁹ Gulrukh (2004) cited in Halim (2004: 93).

¹⁹⁰ IWGIA, 1999 as cited in Halim (2005:74).

¹⁹¹ See in particular articles 14, 27, 28 and 29 of the Constitution of Bangladesh. Convention No. 169 also contains several relevant provisions. In particular, the Convention stands out as the only international instrument (at article 20 (3)(d)) that deals with sexual harassment at the workplace.

¹⁹² Members of Assam, Nepali or Gurkha, and Santal people living in the CHT (descendants of migrants from Assam, Nepal and Northwest Bangladesh and India) have also demanded special safeguards in the CHT, although the CHT Regulation, 1900 and the district and regional council laws do not recognize them.

¹⁹³ Roy (2003a: 34). Interview with Ranglai Mro, president, Mro Social Council and former chairman, Sualok union in Dhaka on 12 February, 2009.

¹⁹⁴ Reforms in this regard would also be consistent with the spirit of consultation and participation as provided in article 6 of Convention 169.

As in the case of the less numerous peoples in the CHT, the self-government systems of the plains indigenous peoples have been de-recognized long since. This situation needs to be remedied, for example, by amending the elective local government body system to create 'reserved' seats in appropriate areas (see chapter 2.1., ante). Moreover, the formerly prevailing system of retaining Welfare Officers at district level – preferably from local indigenous people – could be revived or introduced, as the case might, in the original or amended form, as appropriate. Demands to establish a separate Ministry of Adivasi Affairs, as demanded by Adivasis, could also improve the situation in the plains.¹⁹⁵ Such reforms would be consistent with articles 7, 8 and 10 of Convention No. 107, which provides safeguards for the customary laws, cultural heritage and integrity of indigenous peoples (article 7, 8, 10).

As in the case of political representation, the situation of social and economic opportunities among indigenous peoples is also unequal. Access to education among some of the indigenous peoples – e.g., in the northwestern Rajshahi division, and among the least numerous peoples in the CHT – is seriously inadequate, being far below the national literacy rate (which itself is low), and therefore calls for special attention. Indigenous communities inhabiting remote parts of the CHT - including those that have been internally displaced during the conflict, and who still remain un-rehabilitated - are deprived of both education and healthcare facilities. These too require special attention, which will not be forthcoming unless the concerned laws are supplemented with detailed subsidiary rules, regulations, and guidelines providing special measures to ensure true equal opportunity as provided in the Constitution of Bangladesh, the ILO Convention No. 107, and other international human rights treaties applicable to Bangladesh. Concerted efforts to operationalize some of the areas outlined in the PRSP-II could visibly improve the situation of economic and social rights, at the least. In particular, special measures need to be taken to provide state-funded healthcare and primary education facilities in remote and semi-remote areas that do not otherwise satisfy the general criteria on population, location etc. as mentioned in the national health and primary education policies. The aforesaid policies - the National Health Policy and the National Primary Education Policy - require reforms to accommodate the situation of indigenous peoples, and be supplemented with appropriate policy guidelines and administrative action. With regard to the policy on Primary Education, some progress was made during the period of the Caretaker Government with regard to affirmative action provisions on registration of schools, appointment of teachers and so forth.¹⁹⁶

VIII. INDIGENOUS PEOPLES' POLICIES OF BILATERAL & MULTILATERAL DEVELOPMENT AGENCIES

Bilateral and multilateral development agencies play an important role in supporting development programmes and projects in Bangladesh through grants and loans. Many of them also have their own indigenous peoples' policies to guide the context of development cooperation involving indigenous peoples and to enhance the participation of indigenous peoples' in the process of development. Most of them expressly account for the marginalized situation of indigenous peoples. These include those of European Community member states, including Denmark, Germany, the Netherlands, Spain and the United Kingdom. The policies of the Netherlands and Denmark in particular, have a strong rights focus. Most make specific references to international human rights instruments, including ILO Convention No. 169 and the (then draft) UN Declaration on the Rights of Indigenous Peoples, and other relevant international instruments relevant to environment and development, including Agenda 21, adopted at the Rio Earth Summit in 1992, and the Convention on Biological Diversity. The provisions of many of these policies have been influenced by Convention No. 169. Some of the Indigenous Peoples' policies of multilateral lending agencies such

¹⁹⁵ For a detailed discussion of possible administrative reforms in favour of the plains indigenous peoples, see Roy (2003b) and Roy (2005d).

¹⁹⁶ Interview with Rasheda Chowdhury, former Adviser, Ministry of Primary and Mass Education, Caretaker Government of Bangladesh, Dhaka on **March, 2009**. This author, in his capacity as the State Minister for the Ministry of CHT Affairs (January 2008 to January 2009) also attempted to guide the Rangamati Hill District Council to adopt a strong affirmative action policy on appointment of teachers of indigenous background because of their suitability to teach indigenous students in their mother tongue and otherwise to teach in a culturally appropriate setting.

as the World Bank, and regional development banks, such as the Asian Development Bank, are generally regarded as *safeguard* policies, in that they aim, among others, to mitigate or soften the negative impact of development interventions. All of the above reflect the adoption of an increasingly co-ordinated approach and common understanding of the problems and aspirations of indigenous peoples among development-related donor institutions, lending agencies and other major development actors in general. The aforesaid perspectives are wholly compatible with the concept of participatory development as mentioned in article 5 of ILO Convention No. 107, which are essentially similar to those of the corresponding sections of ILO Convention No. 169 (particularly articles 6 & 7), although the latter are worded in stronger language, reflecting the progressive development of international human rights law, including the principle of free, prior and informed consent.¹⁹⁷ No doubt, the development-related provisions of Convention No. 107 also need to be understood in the context of the aforesaid progressive concepts and paradigm shifts.

Among these, the most progressive is that of the Government of Denmark. Known as the *Danish Strategy for Indigenous Peoples*. This policy was reviewed by a team of indigenous experts from different parts of the world in 2000-2001, at the invitation of the Danish government. The team praised its contents but advised better implementation through mainstreaming.¹⁹⁸ Among other relevant policies is the European Commission's policy on indigenous peoples.¹⁹⁹ The aforesaid policies stand out among other comparable documents as being of a 'political' nature, in that they may be invoked to urge the Danish Government and the European Community - major development partners of the Government of Bangladesh - to not only follow the policy in their development projects, but to raise the issue of the indigenous peoples' rights in their dialogues and interface with national governments, and inter-governmental and UN agencies. At the international levels, and in the countries of its bilateral cooperation, including in Bangladesh, the Government of Denmark has been actively supportive of the rights of indigenous peoples.

The UNDP also has its own policy on indigenous peoples. In 2003, on the basis of complaints that various components of the UNDP's project entitled *Promotion of Development and Confidence Building in the CHT* were contrary to the UNDP's own policy on indigenous peoples (*UNDP and Indigenous Peoples: A Policy of Engagement*) a team was sent by UNDP headquarters in New York to the CHT in January, 2004 to look into the matter.²⁰⁰ Eventually, the dispute was resolved amicably. Thus this was an example of advocacy work that successfully invoked an Indigenous Peoples' policy of a development institution in defence of indigenous peoples' rights.

The experiences of indigenous peoples of projects funded by the World Bank and regional development banks (including the Asian Development Bank) in different parts of the world has been far from happy. The support of the Asian Development Bank in the forestry sector in Bangladesh is regarded as having had negative impacts on the rights of indigenous peoples.²⁰¹ A *potentially* positive example of the Asian Development Bank's involvement in a project involving indigenous peoples in Bangladesh is the *Chittagong Hill Tracts Rural Development Project*.²⁰² The

¹⁹⁷ The principle of free, prior and informed consent ("FPIC") occurs several times in the UN Declaration on the Rights of Indigenous Peoples in the context of development and land use, including in paragraphs

¹⁹⁸ Review Team (2001) (this author was a member of this Review Team).

¹⁹⁹ See Working Document of the [European] Commission of May, 1998. (http://www.ogiek.org/indepth/indigenous_peoples_dec_eng.pdf). See also, European Parliament Resolution A3-0059/93 of 1994.

²⁰⁰ The team consisted of Ms. Victoria Tauli-Corpuz (now chairperson, UN Permanent Forum on Indigenous Issues), Ms. Elsa Stamatopoulou (now Secretary, UN Permanent Forum on Indigenous Issues) and Ms. Sarah L. Timson (former UNDP official), who visited Bangladesh between 04-15 January, 2004 and met government officials and CHT leaders. See IWGIA (2005:382), IWGIA (2006: 370-371).

²⁰¹ Gain (2000: 50-52), Roy & Halim (2000), Roy (2002b), Chakma (2000:140-150).

project is known to have been initiated with the consent of the Chittagong Hill Tracts Regional Council, the premier institution of the Chittagong Hill Tracts region, and includes the indigenous chairman of the council as the *ex-officio* chairperson of the project's *Regional Coordination Committee*.²⁰³ However, there is a potentially negative aspect of the project in that a component on micro-credit (small loans) appears to have been incorporated into the project at the behest of the recommendations of the bank's president, rather than the wishes of the indigenous peoples of the region.²⁰⁴ In any event, one may consider where there it is still too early on in the project cycle to judge the success or failure of the project with regard to the rights and welfare of the indigenous peoples of the CHT.

The European Commission (EC) – which also has its own Indigenous Peoples policy - is also a major development partner of the Government of Bangladesh, and one of the major funders of a UNDP-managed project in the CHT. It has also funded development projects in various other countries of the world, including in areas inhabited by indigenous peoples. In 2003, the EC had some of its projects in indigenous areas evaluated by indigenous experts and the findings shared among indigenous peoples, EC project staff and policy-level EC officials. Similar undertakings could be taken for projects funded by the Asian Development Bank and other such funders of projects in Bangladesh. Similarly, indigenous peoples have demanded that the World Bank should involve indigenous organizations in actively tracking and monitoring the bank's operations through the whole project cycle.²⁰⁵ Recently, the World Bank replaced its existing *Indigenous Peoples* policy, OD 4.20, with a new policy, known in short as OP 4.10/BP 4.10. Although the bank included many seemingly beneficial provisions that are respectful towards the rights of indigenous peoples, most of these provisions appear to have more of a recommendatory, than a mandatory, character.²⁰⁶ The Asian Development Bank is reviewing its existing policy on Indigenous Peoples. It is to be hoped that the experience of the World Bank will not be repeated in this case, but the prospects may not be all that bright.²⁰⁷

IX. INTERNATIONAL HUMAN RIGHTS LAW & THE INDIGENOUS PEOPLES OF BANGLADESH²⁰⁸

Internationally, and especially within the United Nations (UN) system, high focus has been put on indigenous issues over the last decade or so. Landmark decisions and programmes within the UN include the declaration of 1993 as the *International Year of the World's Indigenous People*, the declaration of the decade between 1995-2004 as an *International Decade for the World's Indigenous People*, the appointment of a *Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples* in 2001²⁰⁹, the establishment of the *UN*

²⁰² This project was initiated through ADB Loan No. 1771-BAN (SF). The project commenced in May, 2004 and is scheduled for completion in March, 2008.

²⁰³ Project Proforma of the Ministry of Chittagong Hill Tracts Affairs, Government of Bangladesh, March, 2004, p. 67 (Annexe 20).

²⁰⁴ Roy (2005c).

²⁰⁵ Statement of representative of Indigenous Peoples' Organizations participating at a *Round Table* meeting on the World Bank's Indigenous Peoples' Policy held in Washington, DC, USA on 17 October, 2002.

²⁰⁶ See, for example, statement of representative of Indigenous Peoples' Organizations participating at the Round Table meeting on the World Bank's Indigenous Peoples' Policy in Washington, DC, USA on 17 October, 2002. See also, AITPN (2002).

²⁰⁷ For a critique of the Asian Development Bank's (ADB's) indigenous peoples policy and the process of reform, see Roy (...). This author was part of consultation process of the Bank for its Indigenous Peoples policy in 2005 and again in 2007/2008. Recent reports suggest that the new Indigenous Peoples Policy of the ADB under consideration by its board may actually weaken the safeguards for indigenous peoples. In particular, principle of Free, Prior and Informed Consent (which has been strongly retained in the UN Declaration on the Rights of Indigenous Peoples) may be retained at best in a weakened format in the new policy on account of opposition by North American and Australasian governments in particular.

²⁰⁸ This section draws generously from Roy (2004:160-168).

²⁰⁹ Dr. Rodolfo Stavenhagen, a Mexican professor of Law, was appointed as the Special Rapporteur for an initial 3-year term, and extended once. The current Special Rapporteur is Dr. James Anaya, Professor of Law at the University of Arizona, USA. For experiences of invoking the Special Rapporteur's office, see Tauli-Corpuz et al (2004) and Anaya (2009).

Permanent Forum on Indigenous Issues in 2000²¹⁰ the adoption of the UN Declaration on the Rights of Indigenous Peoples by the UN General Assembly in September 2007 and the establishment of the *UN Expert Mechanism on the Rights of Indigenous Peoples*, which reports to the Human Rights Council, which held its first meeting in October, 2008.²¹¹

The adoption of the Declaration on the Rights of Indigenous Peoples came about through the commitment of the international community as expressed in several global meetings, including the 2005 World Summit.²¹² The Declaration is hoped to draw much-needed attention towards the situation of indigenous peoples worldwide, and to encourage legal and administrative reforms, in a spirit of partnership with indigenous peoples. The establishment of the Expert Mechanism in 2007 – whose members are all experts of indigenous origin from different parts of the world - is another major development for the promotion and protection of the human rights of indigenous peoples. This body is expected to take over some of the functions earlier fulfilled by two subsidiary bodies of the Commission on Human Rights, namely, the UN Working Group on Indigenous Populations and the UN Sub-Commission on the Protection and Promotion of Human Rights. However, since this body will report directly to Human Rights Council, one could expect that the human rights of indigenous peoples will now receive attention at a higher level within the United Nations, than before. However, despite having three separate United Nations mechanisms with specific mandates on indigenous issues (the Permanent Forum, the Expert Mechanism and the Special Rapporteur), there are several limitations in the functions of the three mechanisms, as was discussed in-depth at an international seminar held in Madrid in February, 2009.²¹³

The Declaration on the Rights of Indigenous Peoples acknowledges several key rights that apply to indigenous peoples, including on self determination, autonomy, implementation of treaties and agreements concerning indigenous peoples, formal acknowledgment of their collective and individual land rights, maintaining indigenous justice systems and customary law, just and prompt resolution of land and other disputes involving indigenous peoples, freedom from militarization, cultural and language matters, and above all, freedom from all forms of discrimination. On the adoption of the Declaration, the most important challenges – apart from converting it into a UN treaty (convention or covenant or as otherwise named) at some point in the future – will be to seek ways to implement it within the UN and other inter-governmental contexts, and through advocacy at country levels. An immediate need is to translate its provisions into as many relevant languages as possible.

Declarations are extremely important in guiding governments, the UN system, and other international fora in taking necessary measures. Such instruments have great moral authority, although from a purely legalistic perspective of state agencies involved in administration, they may be regarded as not “legally binding”. Ratified multilateral treaties (whether called covenants or conventions or otherwise), unlike Declarations, are directly binding upon the

²¹⁰ Indigenous people from Bangladesh, both from the CHT and the plains regions, have participated in each of the annual sessions of the Forum since May, 2001 to May, 2006. However, questions were raised in the Parliamentary Committee of the Ministry of CHT Affairs regarding statements made by Bangladeshi indigenous participants at the Forum’s 5th session in 2005, which sought to summon these participations before the committee to answer for their statements. On the other hand, human rights and indigenous peoples’ organizations from different parts of the world condemned the committee’s proposed summons. See for example, IWGIA (2006: 366).

²¹¹ By Resolution 6/36, dated 14 December 2007, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples with a mandate to “provide the [Human Rights] Council with thematic expertise on the rights of indigenous peoples”. See, Henriksen (2009).

²¹² UN Doc. A/HRC/1/L.10, 30 June, 2006. See in particular, page 53 for the General Assembly resolution related to the 2005 earth Summit and other high level decisions on the Draft Declaration process. .

²¹³ *International Expert Seminar on the implementation of indigenous peoples’ rights: The Role of the UN mechanisms with a Specific Mandate regarding the Rights of Indigenous Peoples*, held in Madrid on 4-6 February, 2009, and co-organized by the NGOs, Almaciga from Spain and the International Work Group for Indigenous Affairs (IWGIA) from Denmark, and supported by the Spanish Cooperation Agency for International Development Cooperation (AECID), under the Spanish Foreign Ministry.

ratifying countries, which are then subject to the respective monitoring systems, usually entailing reporting responsibilities, among others. However, as far as UN agencies are concerned, the difference between a treaty and a declaration may in many cases be almost irrelevant, at least as far as their own programmes are concerned, as long as these do not violate national or international law. In either case, the agency needs to respect the provisions of these universal human rights standards. In the case of the Declaration on the Rights of Indigenous Peoples, the instrument actually calls upon UN agencies to promote and implement the provisions of the Declaration.²¹⁴ Therefore, just as the integrationist aspects of ILO Convention 107 are no longer regarded as relevant, similarly, the provisions of ILO Convention 169 (and 107) need to be looked at anew in light of the positive developments in international law, including the UN Declaration on the Rights of Indigenous Peoples. It is important to underscore that the Declaration does not *create* new rights, but merely reinterprets existing international law through a truly non-discriminatory and progressive perspective.

Among the multilateral human rights treaties ratified by Bangladesh, the ILO Convention No. 107 is of the utmost importance to the indigenous peoples of Bangladesh, since it is the only treaty dealing directly and substantively with indigenous peoples' rights. Other treaties of relevance for Bangladeshi indigenous peoples include the *International Convention on the Elimination of Racial Discrimination* (CERD), the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention on the Elimination of Discrimination against Women* (CEDAW) and the *Convention on the Rights of the Child* (CRC).. In addition, there is the *Convention on Biological Diversity*, which, although dealing primarily with biological diversity, also contains a number of provisions relevant to the resource rights and cultural heritage of indigenous peoples.²¹⁵

Indigenous rights activists from Bangladesh have participated in many international processes over the last decade or so, in the UN Permanent Forum on Indigenous Issues, in a number of subsidiary bodies of the former Commission on Human Rights dealing with indigenous issues, including the *Working Group on Indigenous Populations* and the *Working Group on the Draft Declaration on the Rights of Indigenous Peoples*, in the first session of UN Expert Mechanism on the Rights of Indigenous Peoples in October, 2008 and most recently, at the Universal Periodic Review under the Human Rights Council in Geneva, in February 2009. However, their participation in the formal processes of the treaty monitoring bodies, including the process of supervision of ILO Convention No. 107, and their engagement with the Office of the *UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples*, has been very limited, at best. Unless this trend changes significantly, the impact of these processes on the ground will remain limited. Given their political marginalization in the Bangladeshi polity, it would not be strategic for indigenous peoples to neglect the human rights treaty processes, including the ILO 107 process.

Of course, international human rights processes do have shortcomings. It is sometimes said that they have little or no "teeth" in terms of direct implementation. Thus, these processes can have a persuasive leverage, but no direct "sting" to enforce decisions on any violation of the international laws concerned. In *dualistic* legal systems such as Bangladesh, rights based on international treaties are not directly enforceable in the domestic courts, unlike in

²¹⁴ Article 42 of the UN Declaration on the Rights of Indigenous Peoples contains the following as regards the implementation of the Declaration: "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."

²¹⁵ The most relevant provisions are articles 8(j) and 10(c). Article 8(j) deals with the "knowledge, innovations and practices of indigenous and local communities...." and the "equitable sharing of the benefits arising from the utilization of such knowledge, innovations" etc. Article 10(c) concerns the "customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements". For an indigenous peoples' critique of the Convention, see, IAITPTF & IWGIA (undated).

monistic systems like the USA, Nepal, Netherlands, Spain and several countries in Latin America,²¹⁶ where treaty law is considered to be a part of domestic law, and hence directly enforceable in domestic courts. Despite these limitations, there is little doubt that participation in the aforesaid processes does lead to pressure upon the government to show adherence to its international human rights obligations, even though the exact extent of such impact is difficult to gauge. Another difficulty in this respect is that such pressure does keep a government on its toes for a short while, but it is sometimes difficult for the activists to sustain such pressure on governments for long, due to constraints of funds, and organizational and networking difficulties. Thus capacity-raising and organizational strengthening of indigenous peoples' organizations and networks remains a high priority for any serious human rights activist.

Interactions between governmental and indigenous participants at international fora can on occasions be quite conflictual, but this need not necessarily be so. Healthy debates between human and indigenous rights activists and government diplomats can and does happen, and these interactions have the potential to improve overall efforts to deal with concerned situation, at least over time, in some cases.²¹⁷ Such dialogues should be encouraged, and this would be consistent with the provisions of Convention No. 107 with regard to *administration* (article 27) and the *elimination of prejudice against indigenous people* (article 25).

Ultimately, the long-term goal of any international human rights treaty, including the ILO Convention No. 107, is to implement the concerned rights in the domestic situation. Therefore, international advocacy and networking needs to be combined with corresponding work at the national and local levels. Of course, these international standards can and should guide legislation and practices within Bangladesh with regard to indigenous peoples' issues, but when it comes to the question of actually implementing the concerned rights, it seems that political lobbying is necessary, a sphere in which indigenous peoples in Bangladesh, as in other parts of the world, have remained quite marginalized, especially on account of majoritarian traditions that go under the name of democracy.²¹⁸ Therefore, efforts to strengthen alliances and networks across the political, ethnic and civic spectrums remains a challenge. This is especially difficult in the case of the plains regions where there is no separate regional or local government system to guarantee the indigenous peoples with a formal say in the process of governance and administration.

X. BANGLADESHI LAWS AND POLICIES & CONVENTION NO. 107: A SUMMARY

10.1. Comparison of Convention No. 107 and the Laws of the Plains Regions of Bangladesh

The preceding discussion shows that there are several areas in which Bangladeshi law and policy fall short of the provisions of Convention No. 107, particularly in the plains regions of the country. The non-implementation of the land alienation safeguards contained in the East Bengal State Acquisition and Tenancy Act, 1950 (relevant to article 13 of Convention No. 107), the continuing absence of participation of indigenous peoples in the programmes of the *Special Affairs Division* (relevant particularly to articles 5, 15, 25 and 27 of Convention No. 107), and the violation of the land and resource rights of the people of the Madhupur forest and in Sylhet division (relevant to article 13 of Convention No. 107), are but the most publicly known situations of policy failure and policy neglect.

²¹⁶ The Latin American countries where international treaty law has the same status as, or higher status than, national law, include Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela. See forthcoming publication of the ILO, "Implementing Indigenous Peoples' Rights : A Practice Guide To ILO Convention No. 169", Programme To Promote ILO Convention No. 169 (Pro 169), 2009.

²¹⁷ Statements of Bangladeshi indigenous participants and those of the representatives of the Government of Bangladesh at the UN Permanent Forum over the last few years show both disagreements over various issues, and efforts of the Government of Bangladesh to demonstrate its positive efforts for indigenous peoples (which it prefers to call "tribal" people).

²¹⁸ For a study on indigenous peoples' negative experiences of political parties and elections in different parts of the world, see Wessendorf (2001).

Other areas where the provisions of Convention No. 107 are unimplemented or under-implemented in the plains include language and cultural rights (especially relevant to articles 7 and 8 of Convention No. 107), healthcare and social welfare, education, training and employment issues (especially relevant to articles 15-26 of Convention No. 107). In substance, it could be said that the provisions of ILO Convention No. 107 have remained very largely unimplemented in the plains regions. The relative absence of issues of the plains indigenous peoples in the reports of the Government of Bangladesh to the Committee of Experts (CEACR), and the equally low level of attention of the Committee's experts on plains indigenous issues is indeed most unfortunate. The absence of procedures allowing a direct role of indigenous peoples in the decision-making processes of the ILO, together with the extreme social and economic marginalization of most indigenous communities in the plains stand as major obstacles towards progress in this context. The apparent lack of attention to the plains areas on the part of the CEACR also reflects lack of information received by them. The ILO has a duty to raise awareness about the reporting process and sensitize governments, employers and workers' organisations in this regard, and this needs to be done by bearing in mind the extreme marginality of some of the indigenous peoples and communities concerned, who all too often continue to remain invisible to, and without a voice in, processes wherein they might otherwise obtain *some* redress for the violation of their rights.

10.2. Comparison of Conventions 107, 169 and the Laws of the Chittagong Hill Tracts

In contrast to the plains regions, the CHT region shows, at least on the face of it, instances of *both* non-implementation and under-implementation of the provisions of Convention No. 107, *and* instances where law and policy in the CHT go beyond the provisions of Convention No. 107. With a broad overview, one can perhaps see under-implementation of the provisions of Convention No. 107 with regard to health and social security issues (articles 19, 20), and language and communication matters (especially articles 22, 23), at least from the point of view of actual practice. With regard to education and employment provisions (particularly articles 21-26 and 15, respectively), the situation is perhaps more or less at par with the provisions of the convention. However, with regard to the role of the indigenous peoples in governance, administration and the development processes, the situation in the CHT is perhaps somewhat ahead of the standards of Convention No. 107, and closer to the provisions of the more progressive and stronger Convention No. 169. The matrices contained in the table 3 series mention the most important laws of Bangladesh that are directly relevant to indigenous peoples, and their relative situation in comparison to the provisions of Convention No. 107, and contextually, to Recommendation No. 104, which is related to Convention No. 107, and to Convention No. 169, where relevant.

10.3. ILO Convention 107 and its Impact on Bangladeshi Laws & Policies

The situation of implementation of the provisions of ILO Convention No. 107 in Bangladesh is far from satisfactory. The overall situation of participatory governance, development and land rights in the plains regions is very clearly indicative of the very little impact that the provisions of the Convention have had in influencing legal and administrative measures to protect the rights and welfare of the plains indigenous peoples. The only instrument that substantively refers to indigenous peoples' rights in the plains – the East Bengal State Acquisition and Tenancy Act, 1950 – is an Act that has its roots in a 19th century law of the British colonial period, and was clearly not the result of the ratification of the convention by the Government of Bangladesh in 1972, or by its predecessor Government of Pakistan, in 1960.

In comparison, the Chittagong Hill Tracts region shows a larger number of legal and administrative measures that safeguard the rights of the region's indigenous peoples, with some even going beyond the standards of Convention No. 107 onto the higher standards of Convention No. 169. These developments, however, are again, very unlikely to have been due to the direct influence of the provisions of the Conventions No. 107 or 169. It is perhaps purely coincidental that many of the relevant provisions of CHT or national law relate closely with, and are compatible with, various provisions of ILO Conventions No. 107 or 169.

A review of the circumstances and periods in which the major pro-indigenous laws of the CHT were formulated show three major periods. The most progressive period is obviously the period after 1997, in which year the "peace" accord of CHT was signed. Of the laws before 1997, there are some reasonably progressive ones that were passed in 1989 (the Hill District Council Acts), during the period of the armed revolt, and others that were mostly framed during the period of British colonial rule (1860-1947). In all three of the cases, the determining factor was clearly not the provisions of the ILO Convention. In the post-1997 period, the key activating agent is the 1997 Accord. As for the pre-1997 period, the 1989 package was a result of another political agreement with CHT leaders (in 1988), when the armed struggle was still continuing, and the rest were doing the colonial period.

XI. ASSESSING THE MONITORING SYSTEM OF CONVENTION NO. 107

11.1. Important Features of the Reports of the Committee of Experts

The reports provided by the Government of Bangladesh ("GOB") to the ILO's *Committee of Experts on the Application of Conventions and Recommendations* ("CEACR" or "Committee"), and the queries and *Direct Requests* of the Committee, and its *Observations* show a number of special features or trends, among others. Firstly, the reports of the GOB are quite often not sent at all or sent late. For example, this was mentioned in the Committee's *Observation* of 1994 (64th session), repeated in 1995 (66th session), in 1997 (68th session) in 2000 (71st session), and again in the Committee's Individual Observation published in 2005. Secondly, the GOB has not responded at all, or adequately enough, to the requests made to it to provide information about tribal people of Bangladesh outside of the CHT (1990: 60th session, 1991: 61st session, 1993: 63rd session, 1995: 66th session, 1998: 69th session, and in 2000: 71st session). The Committee even referred to specific incidents: including conflicts between the Garo people with the Forest Department (1991, 1993, and 1995). Thirdly, queries about CHT laws – including on the status of the CHT Regulation, 1900 – seem to have been left largely unanswered (1993, 1994, 1995, and 2005). The aforesaid pattern of reporting indicates, among others, that the GOB has continually been evasive about the status of the CHT Regulation, has largely ignored the situation of the indigenous people in the plains, and most importantly, sent the reports in such a manner, and at such periods, that it enabled it to avoid a focussed and sustained monitoring of particular aspects of its responsibilities under the Convention. On the other hand, the focus of the Committee too seems to have been sustained on certain issues (e.g., on the CHT Regulation, 1900), but wavered in others – such as on the situation of the plains indigenous people (which showed fewer specific queries), in fact almost mirroring the GOB's example. Fourthly, it is seen that in a limited number of instances, the Committee has referred to observations of other human rights monitoring processes concerning the situation of indigenous people in Bangladesh, such as observations of the *UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment* (1995, 1997, 1998, 2000) and some observations of the *UN Committee on the Elimination of Racial Discrimination* (1993, 1994, 2001). Such references no doubt add to the combined impact of human rights monitoring processes upon the situation on the ground, particularly bearing in mind the disadvantages faced by indigenous people and their consequently marginal role in facilitating effective monitoring of formal human rights processes.

11.2. Obstacles towards Effective Monitoring: Access to Data & Marginality of Indigenous Peoples

With regard to certain issues - such as on land-related laws of the CHT, and the role of the chiefs in administration - the queries of the CEACR suggest access to reasonably detailed knowledge on the part of its members. In other cases - such as on the status of the CHT Regulation, 1900 -, both the questions asked (by CEACR), and the answers provided (by the Government of Bangladesh), suggest absence of clarity in conception. Therefore, effectiveness of the monitoring process may depend on the relative expertise of the 'experts'. However, the expertise of the CEACR members may also depend upon the nature and extent of access that they have to relevant information. Such information may not be easily available for a number of factors, including the non-cooperation of the government, the dysfunctionalities within the system of governance in the country, and most importantly, the marginalized conditions of the indigenous peoples concerned. The more marginalized they are, the

more likely it is that information about the violation of their rights remains un-communicated at worst, or only locally disseminated at best on account of language and technical factors. It is therefore extremely important that the C.107 monitoring process accounts for two significant features that are unique to the process. Firstly, that this Convention deals with a section of humanity, the world over (including in Bangladesh), that is perhaps second to none in terms of political, social and economic marginality. And secondly, that the process of ILO Conventions 107 and 169 (both are identical) is perhaps the only international multilateral treaty process in which the subjects of the treaty (indigenous and tribal people in this case) do not have a formal standing ("*locus standi*") to either complain directly to the monitoring body (the CEACR), or otherwise participate in other relevant decision-making processes (such as the International Labour Conferences, which are restricted to the 'tripartite' system involving government members of the ILO, employers' associations and trades unions).

At the country level, shortcomings faced by indigenous people in conducting dialogues with their own government, including the focal institutions – in this case the *Ministry of CHT Affairs*, the *Special Affairs Division* and the *Ministry of Labour* – compounds the issue further. Therefore, the combined effect of the disadvantage suffered by indigenous peoples in the aforesaid respects make it all the more difficult for them to help provide necessary information and inputs to enable the members of the CEACR and the government officials concerned to carry out their respective responsibilities under the convention in a more informed manner. Unless and until the aforesaid weaknesses in the chain of supervision and monitoring are addressed in some form or the other, the overall system of monitoring of the Convention is unlikely to improve significantly. *Perhaps what cries out very loud in the present scheme of things is to bring about periodical participatory reviews of the entire ILO system of monitoring of Convention No. 107 (and Convention No. 169) involving representatives of indigenous peoples, among others.* The review of the *Danish Strategy for Indigenous Peoples* by a team of indigenous experts in 2001, and the experiences of the European Commission's monitoring of projects by indigenous experts in 2003, are examples that can help provide necessary guidance in this respect.

XII. MEETING THE CHALLENGES

Increased awareness about the Convention No. 107, and a marked improvement in the process of implementation of the Convention – including through monitoring by the CEACR – will depend upon the nature of measures that may be taken by the ILO itself (at its head office and in its country offices), by the Government of Bangladesh, and by the indigenous peoples of Bangladesh, who will hopefully act as the main catalyst, since it is their rights that are at stake. In addition, much may also depend upon what other relevant 'actors' of the process do, including indigenous peoples in other countries that have ratified Convention No. 107, other existing and potential allies, whether they are state members of the ILO, Bangladeshi and foreign employers' associations, Bangladeshi and foreign trades unions, human rights organizations, United Nations bodies and others. The following are regarded as among the most important areas of focus to help further the rights under this convention, in the context of Bangladesh, and where relevant, to the ILO 107 and 169 processes in other countries.

12.1. REVIEW OF ILO 107 MONITORING PROCESS BY INDIGENOUS AND OTHER EXPERTS

A review of the ILO process on Convention No. 107 by experts, including from among indigenous peoples, may provide useful insights into possible measures to help facilitate better monitoring of the implementation of the Convention. Such a review could be asked to focus on such matters as the dissemination of necessary information, the internal and monitoring processes of the ILO and the nature of indigenous participation therein, the system of governance in the ratifying country and the strengths and weaknesses of courts of law and other justice delivery systems, the presence of human rights commissions and civil society human rights watch dog bodies, the level of sensitization among relevant government leaders and officials, the organizational strengths and weaknesses of indigenous peoples and their organizations and institutions, and the possibilities of increasing synergy through coordination and networking, among others. Some of these are elaborated below.

12.2. INFORMATION

Information on the Convention, its formal monitoring process, the tripartite ILO system, and best practices on the implementation of ILO Conventions 169 and 107, among others, need to be widely disseminated, in appropriate language and form. The ILO country offices can play the role of a focal group, while partnering with indigenous peoples' organizations, relevant government agencies and others in sharing responsibilities.

12.3. PROCESS AND PARTICIPATION

The existing difficulties of direct participation of indigenous peoples within the ILO system need to be addressed. The establishment of the high-level United Nations Permanent Forum on Indigenous Issues should help encourage the ILO system to itself reform, if so deemed necessary by all concerned. Until such time as reforms to enable the full participation of indigenous peoples in the ILO system are in place, *ad hoc* measures could be taken to provide 'observer status' to indigenous peoples' organizations to enable them to participate in relevant ILO meetings and processes. The experience of indigenous participation during the drafting of Convention No. 169 needs to be revisited to provide practical ideas in this regard.

12.4. MONITORING

The formal standing (*locus standi*) of individuals, institutions and organizations of indigenous peoples should be acknowledged to enable them to directly address the CEACR, in appropriate ways (e.g., by communicating written complaints in a fixed format set by the CEACR).

12.5. SENSITIZATION

Appropriate measures need to be taken to sensitize and orient members of the CEACR, concerned ILO staff at ILO headquarters and in country offices, and concerned Government Departments, on indigenous issues in general, and on other relevant matters, as appropriate. In the case of the specialized ILO processes, steps may be taken to orient relevant government and ILO staff, who may be more familiar with 'labour' issues than indigenous issues. Parliamentarians, judges and officials of the concerned ministries (such as the Ministry of CHT Affairs, the Special Affairs Division and the Ministry of Labour in Bangladesh) should be included. Whenever international issues of Convention No. 107 arise, the Ministry of Labour should involve other relevant bodies (such as the Ministry of CHT Affairs, and the Special Affairs Division, and relevant self-government institutions of indigenous peoples, such as the regional and district councils and the traditional institutions in Bangladesh). In areas with large concentrations of indigenous people, it should be compulsory for government officials posted therein to be sensitized through training and orientation programmes. Indigenous peoples can streamline their efforts to resist 'demonization' campaigns or misinformation (intended or otherwise) that tend to lead to the portrayal of indigenous peoples' rights as being prejudicial to the rights of others, which it is not. Relevant government bodies, Indigenous peoples' institutions and organizations should take the lead in such matters.

12.6. CAPACITY-RAISING

Capacity-raising of indigenous peoples' organizations is a crucial matter. Ultimately, it has to be indigenous peoples who will lead the way towards how the convention may be best implemented. Strengthened organizational capacity of indigenous peoples' institutions and organizations will not only help keep both the ILO and the Government 'on their toes', but also help strengthen alliances and networks with others that are involved in protecting and promoting indigenous peoples' rights. The UNDP-CHTDF project has a component on Capacity Building that human rights activists would do well to monitor and support. Similar activities for the plains Adivasis need to be encouraged.²¹⁹

²¹⁹ The National Steering Committee of the UNDP-CHT project – which was formerly chaired by this author in his capacity as the State Minister for CHT Affairs – had decided to allocate some funds for a survey of the plains Adivasis' capacity building and development needs to pave the way for actual projects to be funded by the Government of Bangladesh and international development agencies.

12.7. NETWORKING, ALLIANCES AND SYNERGY-RAISING

All possible actors concerned, indigenous peoples, governments, relevant UN bodies, employers' associations, trades unions, NGOs, human rights organizations and other civic bodies need to coordinate their activities to share responsibilities to promote indigenous peoples' rights. Indigenous peoples have to proactively cultivate effective alliances, including with ILO member states, employers' associations and trades unions, human rights activists, NGOs, and development agencies. Enhanced coordination of the ILO country offices with relevant programmes of other governmental, non-governmental and UN agencies is desirable. Above all, the views of the peoples concerned should be respected, to promote joint efforts, in the spirit of the theme of the *Second International Decade for Indigenous People: Partnership for Action and Dignity*.

12.8. COMPLEMENTARY WORK IN HUMAN RIGHTS TREATY BODIES AND OTHER INTERNATIONAL & REGIONAL HUMAN RIGHTS PROCESSES

Human rights advocates and others seeking to implement of the provisions of ILO conventions (such as ILO Conventions No. 107 and 169, or other human rights treaties) should, in addition to working through the ILO supervisory system, explore all possible avenues of redress, particularly the human rights treaty mechanisms offered by the United Nations system (ICCCPR, ICESCR, ICERD, CEDAW, CRC, CAT), the Special Rapporteur mechanisms, the Office of the High Commissioner for Human Rights, the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, and national and regional human rights commissions and other mechanisms (where they so exist).²²⁰

12.9. RATIFICATION OF ILO CONVENTION NO 169

Ratification of Convention No. 169 by Bangladesh could lead to a marked improvement in the human rights situation of indigenous peoples. This has been recommended in the Poverty Reduction Strategy Paper ("PRSP-II) published in 2008. This was also a recommendation of several member countries of the Human Rights Council during the Universal Periodic Review of members of the Council, including Bangladesh, at the Council's session in February 2009. The recent ratification by Nepal and the supportive role of the ILO's special project on promotion of Convention 169 ("Pro-169") could provide valuable lessons in this regard.

12.10. CONSTITUTIONAL REFORM

Constitutional reform for recognition of the indigenous peoples of Bangladesh as indigenous in English and as Adivasi in Bengali, along with constitutional recognition of the special administrative status of the CHT and constitutional entrenchment of the CHT Accord of 1997 may improve the overall situation. Reforms in this regard would provide a clear direction to policy-makers and government officials alike to eradicate discrimination and provide affirmative action measures, as appropriate. The present Awami League-led Grand Alliance having a two-thirds majority in parliament is an ideal opportunity to lobby for the desired changes.

12.11. LEGISLATION

In addition to constitutional reform, legislation is required in Bangladesh to bring several Bangladeshi laws in conformity with the provisions of ILO Convention No. 107 and other human rights treaties ratified by Bangladesh. In this respect, the most important CHT laws requiring reform are the Land Commission Act of 2001 and the CHT Regulation of 1900. The plains require more substantive legislative reforms, the most desirable of which are: (i) the Union Council laws (to reserve seats for Adivasis); (ii) EBSAT Act, 1950 (to include restitution for cases of loss of possession and not just transfer of title and to recognise Adivasi land rights based on customs, usage and prescription); (iii) the Forest Act, 1927 (to recognise the traditional and other rights of inhabitants of reserved, acquired, vested and protected forests and adjacent areas; this applies to an extent to indigenous communities in

²²⁰ The recent experience of the Indonesian national indigenous peoples' organization, AMAN, in its work with the UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples and the Committee on the Elimination of Racial Discrimination is worthy of studying for indigenous peoples in Bangladesh and elsewhere.

the CHT as well); (iv) formal recognition of the customary personal laws and juridical systems of the Adivasi peoples.

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A N N E X E

Table 1
Names of Indigenous, Aboriginal & 'Tribal' Peoples of Bangladesh in Different Classifications

SI No.	Name of People	Alternative Acceptable Names	Misnomers	Source	Population (1991 Census)	Comment
1	Assam			BD Adivasi Forum, 2005		Descendents of British-period government personnel migrants from Assam.
2	Bagdi			BD Adivasi Forum, 2005		
3	Banai			EBST Act,1950		
4	Bediay	Bede, Bedey		BD Adivasi Forum, 2005		Nomadic riverine people.
5	Bhuiya			EBST Act,1950		
6	Bhumil	Bhumali?		BD Adivasi Forum, 2005		
7	Bhumiji			EBST Act,1950		
8	Bom	Bawm; Bawm Zo	Bonjogi	RC Act, 1998	13,471	Considered part of Mizo (Kuki-Chin) group in India. Live in Bandarban district mostly.
9	Brong			Timm, 1991		
10	Buna			1991 Census	7,421	
11	Chak	Sak, Tsak		CHTRC Act, 1998	2,127	Only in Bandarban district.
12	Chakma	Sangma, Thek		CHT Regulation 1900	252,858	The Chakma call themselves "Sangma" in Chakma, and as "Chakma" in Bengali and English. Burmese call them "Thek". The Chakma is the most numerous indigenous people in Bangladesh. Also in India and Burma.
13	Dalu			EBST Act,1950		Khaleque (in Gain, 1998: 12) regards them as a sub-group of the Mandi (Garo).
14	Garo	Mandi		EBST Act,1950	64,280	Larger group lives in Meghalaya, India.
15	Gond			EBST Act,1950		
16	Gurkha			BD Adivasi Forum, 2005		Descendents of British-period government personnel migrants of from Nepal.
17	Hadi			EBST Act,1950		
18	Hajong			EBST Act,1950	11,540	
19	Ho			EBST Act,1950		Khaleque (in Gain, 1998: 12) regards them as a sub-group of the Munda
20	Horizon	Harijan		1991 Census	1,132	
21	Karmakar			BD Adivasi Forum, 2005		
22	Khando			BD Adivasi Forum, 2005		
23	Kharia			EBST Act,1950		
24	Kharwar			EBST Act,1950		
25	Khasi		Khasia	1991 Census	12,280	Larger group lives in Meghalaya, India. Austric.
26	Khatriya Barman			BD Adivasi Forum, 2005		Most have lost their original language. Revival of indigenous traditions happening.
27	Khumi			CHTRC Act, 1998	1,241	The least numerous indigenous people in Bangladesh after the Lushai.
28	Khyang			CHTRC Act, 1998	2,343	Live in Bandarban & Rangamati.
29	Koch	Kuch, Cooch		EBST Act,1950	16,567	
30	Kole			BD Adivasi Forum, 2005		
31	Kora			EBST Act,1950		
32	Lushai			CHTRC Act, 1998	662	The least numerous indigenous people in Bangladesh, but in Mizoram, Lushai-speakers make up the majority of the Mizo.
33	Maches			EBST Act 1950		
34	Mahali	Mahili		BD Adivasi Forum		Khaleque (in Gain, 1998: 12) regards them as a sub-group of the Santal.
35	Mahato	Mahatu	Mahat	1991 Census	3,534	
36	Malo			BD Adivasi Forum		
37	Mal Paharia			EBST Act 1950		
38	Marma		Magh	CHT Regulation, 1900	157,301	The CHT Regulation and the EBST Act use the word "Magh". Marma and Rakhain (also in Burma) have similar languages and customs. Marma are the second most numerous indigenous people in CHT after the Chakma.
39	Monipuri	Melthai		1991 Census	24,882	Larger group in Manipur, India.
40	Mro	Mru	Murung	RC Act, 1998	22,304	Not to be confused with "Mrung", the name used by the Marma to refer to the Usui, who regard themselves as a sub-group of the Tripura.
41	Munda			EBST Act 1950	2,132	Larger group lives in Jharkhand, West Bengal, Bihar in India.
42	Muriyar			BD Adivasi Forum, 2005		
43	Musohor			BD Adivasi Forum, 2005		
44	Oraon	Urao	Urang	EBST Act 1950	8,216	
45	Pahan			BD Adivasi Forum, 2005		
46	Paharia		Pahary	1991 Census	1,853	
47	Pangkhu		Pankho, Pangkhu	HDC Act 1998	3,227	Considered part of Mizo (Kuki-Chin) group in India.
48	Patro			BD Adivasi Forum, 2005		
49	Rai			BD Adivasi Forum, 2005		
50	Rajbongshi			1991 Census	7,555	
51	Rajuar			BD Adivasi Forum, 2005		
52	Rakhain	Rakhaine	Magh	BD Adivasi Forum, 2005	16,932	Larger group live in Rakhain State, Burma.
53	Santal		Saontal	EBST Act 1950	202,162	The numerous indigenous people in the plains and the second-most numerous in Bangladesh after the Chakma. Larger group in India.
54	Sauria Paharia			EBST Act 1950		
55	Shing			BD Adivasi Forum, 2005		
56	Tangchangya		Tongsongya	RC Act, 1998	21,639	Related to Chakma, also in Burma and Chittagong.
57	Tripura	Tipra, Tripuri		RC Act, 1998	81,014	Larger group in Tripura State, India.
58	Turi			EBST Act 1950		
59	Urua			1991 Census	5,561	

Table 2A

Matrix on
Major Provisions of Bangladeshi Law Related to ILO Convention No. 107
(General Policy Section)

Major Area of Law	Subject Matter	Con 107	Rec 104	Con 169	Bangladeshi Law	Comment/Analysis	
GENERAL POLICY	Development Rights & Opportunities	Art 6		Art 7	CHT Development Board Ordinance, 1976; HDC Acts, 1989, CHTRC Act, 1998	The CHTRC Act has been unable to exercise its supervisory and coordinating role over the Board; The chiefs, headmen and UP chairmen are unable to play their due role as members of the Consultative Committee of the Board.	
	Equal Opportunity	Art 2(a), Art 7(3)		Art 2	Arts 14, 27, 28, 29, Constitution of Bangladesh	A quota system facilitates employment of tribals in government jobs, but in an inadequate manner. There are no easy remedial measures available.	
	Retention of Own Customs & Institutions (Continuing Role of Chiefs, Headmen and Village Elders)	Art 7(2)		Art 7(1), 8(1), 8(2)	Rules 39, 40, 47, 48 CHT Regulation, 1900; Sec 4(5), 4(6), 26, 66, HDC Acts, 1989 ; Sec 5(8), 5(9), CHTRC Act, 1998; Sec 4(c)(4), CHT Reg (Amndmnt) Act, 2003	Chiefs & Headmen receive very meagre governmental support for their offices. Difficulties in enforcing processes of chiefs' and headmen's courts not adequately addressed by governmental and local bodies. In contrast, Supreme Court of Bangladesh has been respectful towards customary laws and traditions of the CHT tribes.	
	Retention of Own Customs (Use of Traditionally Brewed Liquor)	Art 7(2)		8(1), 8(2)	Drugs and Alcoholic Substances Control Act, 1990 (Act XX of 1990)	In practice, tribals are occasionally harassed by police for possessing traditionally produced liquor.	
	Legislative & Administrative Measures Affecting Indigenous Peoples			Rec 36, 37	Art 6(1)(a)	Rule 39, CHT Regulation, 1900; Sec 78, HDC Acts, 1989 Sec 52, 53, CHTRC Act, 1998	Chiefs' consultative prerogatives undervalued by government (see CEACR's <i>direct requests</i> on this in 1995 & 1997). Advisory prerogatives of CHTRC not being exercised to potential levels.
	Development of Indigenous Peoples' Own Institutions & Initiatives				Art 6(c)	Sec 22, Schedule 1 (No. 23), HDC Acts, 1989; Sec 22 (e) CHTRC Act, 1998	Capacity-raising of CHTRC, HDCs and traditional offices neglected by Government.
	Adapting Criminal Penalties to Customary Laws	Art 8			Arts, 9, 10	Limited application of Code of Criminal Procedure, 1898; Rule 40, CHT Regulation, 1900; Sec 10, Drugs and Alcoholic Substances Control Act, 1990	The Code of Criminal Procedure, 1898 applies to the CHT to the extent it is not inconsistent with the CHT Regulation, 1900 and the rules made thereunder.

Table 2B

Matrix on
Major Provisions of Bangladeshi Law Related to ILO Convention No. 107
(Land Section)

Major Area of Law	Subject Matter	Con 107	Rec 104	Con 169	Bangladeshi Law	Comment/Analysis
LAND	Premier Role of Hill District Councils in Land Administration	Art 11	Rec 2	Arts 14, 15	Sec 64, HDC Acts, 1989	Land title grants are suspended due to Government order.
	Role of Chiefs & Headmen in Land Administration	Art 11	Rec 2	Arts 14, 15	Rules 34, 38, 41, 41A, 42, 43, 45, CHT Regulation, 1900	Chiefs and headmen were bypassed during 1980s land grant process for non-tribal population transferees.
	Right to Homestead land	Art 11	Rec 2	Arts 14(1), 14(2)	Rule 50, CHT Regulation	Headmen's powers to provide grants not always respected by Government officials.
	Restrictions against Transfer to Non-Aboriginals	Art 13(2)	Rec 5(1) & 6,	Art 17(3)	S. 97. EBST Act	Law applies to the plains only. Is specially protected in the Constitution in Art. 47(2) and Schedule 1. However, severely under-implemented.
	Restrictions against Transfer to Non-Indigenous-Tribals/Non-Residents	Art 13(2), Convention 107	Rec 5(1) & 6	Art 17(3)	Rule 34(14), CHT Regulation, 1900 Sec 64, HDC Acts, 1989	Law applies equally to three hill districts of CHT. However, no rules or guidelines have been framed to guide exercise of authority by HDCs. Restrictions against inheritance not followed closely.
	Resolution of Disputes over Land			Art 14(3)	CHT Land Disputes Resolution Commission Act, 2001	Commission is still not functional. Requires legal amendment to make it consistent with provisions of 1997 Accord. CEACR sought info on cancellation of rubber plantation leases (2005).
	Land Reserve for Swidden/Shifting Cultivation		Rec 3(1)	Art 14(1)	Rules 41, 42, CHT Regulation, 1900	Often disregarded by Government officials as swidden cultivation is condemned as 'primitive'. Nevertheless, remote communities have to depend on swiddens for subsistence.
	Grazing Lands		Rec 3(2)		Rule 45B, CHT Regulation, 1900	Quite scarce nowadays due to population rise. Affects marginal farmers. Such lands are not protected from privatization.
	Mineral Resources		Rec 3(4)	Art 15(2)	Sec 44 and 2 nd Schedule (No. 16), HDC Acts, 1989	So far not invoked. May be relevant if exploration for gas and oil is resumed.
	Traditionally Used Forest Lands		Rec 36(b)	Art 15(1)	Rule 41A, CHT Regulation, 1900; CHT Forest Transit Rules, 1973 Sec. 28, Forest Act, 1927	Mauza forest conservation by communities suffers from absence of state patronage. Rights of Reserved Forest communities totally disregarded.

Table 2C

**Matrix on Major Provisions of Bangladeshi Law Related to ILO Convention No. 107
(Recruitment, Training, Social Security, Health, Education, Means of Communications etc. Section)**

Major Area of Law	Subject Matter	Con 107	Rec 104	Con 169	Bangladeshi Law	Comment/Analysis
RECRUITMENT AND CONDITIONS OF EMPLOYMENT	Prohibition on Discrimination in Public Employment	Art. 2		Art 20	Art. 29(2)	
	Special Measures on Public Employment Opportunities for Backward Section of Citizens	Art. 2	Rec 9, 12-15		Art. 29(3)(a)	Under-implemented. Tribals are not employed in relation to their population.
	Preferential Employment of Tribals in Class III, IV Jobs in Hill Districts Councils	Art. 2			Sec. 32, 62, HDC Acts, 1989	Generally invoked.
	Preferential Employment of Tribals in Jobs in CHT Regional Council	Art. 2			Sec 29, CHTRC Act, 1998	Generally invoked.
VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES	Vocational Training Institute	Art. 16,17	Rec 16-21	Art 21, 22	Sec 22 & First Schedule (No. 3K), HDC Acts, 1989	Functional but inadequate.
	Rural Industries & Handicrafts	Art 18	Rec 22	Art 23	Sec 22 & First Schedule (No. 10A), HDC Acts, 1989	Functional but inadequate.
SOCIAL SECURITY AND HEALTH	Social Security	Art. 19	Rec 23, 24	Art 24	Sec 22 & First Schedule (No. 11), HDC Acts, 1989	Inadequate.
	Improvement of Health Conditions	Art. 20	Rec 25, 26, 27	Art 25	Rule 38, CHT Regulation, 1900	Role of chiefs in promoting healthcare marginal due to absence of state patronage.
	Healthcare Services	Art. 20	Rec 25, 26, 27	Art 25	Sec 22 & First Schedule (No. 4), HDC Acts, 1989	Very meagre in remote places. National Health Policy does not account for CHT specificities.
EDUCATION AND MEANS OF COMMUNICATION	Spread of Education	Art. 21	Rec 28-32	Art 26, 27	Rule 38, CHT Regulation, 1900	Role of chiefs in spreading education generally marginal due to absence of state patronage.
	Administration of Primary Schools	Art. 21, 22	Rec 28-32	Art 28(1)	Sec 22 & First Schedule (No. 3A), HDC Acts, 1989	Regularly invoked by HDCs.
	Administration of Secondary Schools	Art. 21, 22	Rec 28-32		Sec 22 & First Schedule (No. 3M), HDC Acts, 1989	Authority of HDCs yet to be transferred/transferred.
	Primary Education in Mother Tongue	Art. 23 (1)	Rec 33, 34	Art 28 (1)	Sec 22 & First Schedule (No. 3L), HDC Acts, 1989	Totally unimplemented.

