

AN AUDIT ON THE IMPLEMENTATION OF CHT ACCORD

The Chittagong Hill Tracts Accord 1997 signed between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti (PCJSS) recognises the reestablishment of the rights of the Jumma indigenous peoples over the CHT region, southeastern part of Bangladesh with the formation of four local councils as controlling and supervisory bodies over land & land management, law & order, civil administration, police (local), development, primary & secondary education, forest & environment, and many more.

CHT Accord recognises CHT as a tribal-inhabited region and introduces special political arrangement for CHT with formation of CHT Regional Council (CHTRC), as an apex political body of the region and three Hill District Councils (HDCs). The newly introduced CHTRC and the somewhat older HDCs are also unique to the CHT. The majority of the seats (two-third) in the CHTRC and HDCs, including the positions of chairs, are reserved for indigenous peoples and one-third seats for permanent Bengali residents. The Peace Accord also contributes for the creation Ministry of Chittagong Hill Tracts Affairs (MoCHTA) in Dhaka to be appointed a minister among from indigenous peoples and to be constituted an Advisory Committee to lend support to the ministry. The Accord also provides establishment of Land Dispute Settlement Commission, demilitarization of the region, rehabilitation of the victims etc. The Accord is divided in four parts.

The CHT Accord is a landmark in the history of Bangladesh; it paves the way for the peace, development and representation of the region's people.

THE IMPLEMENTATION STATUS OF THE ACCORD AT A GLANCE:

- i. So far there have not been any official steps by the government to preserve the characteristics of the *"tribal inhabited region"* by keeping their life and living undisturbed and attain the overall development thereof as embodied in the Accord.
- ii. Full execution of the CHT Regional Council Act has not been carried out as yet. Rules of Business of the CHTRC is kept pending as it still waits for government approval for almost last 12 years. In absence of this provision CHTRC is unable to exercise its authority as mandated in the RC Act to supervise and coordinate the activities of all transferred subjects under the three HDCs, law and order, general administration, development programs, the activities of CHT Development Board, coordination of NGO activities, disaster management and relief operation, traditional and social justice etc and issuing license for heavy industries.
- iii. *No other subjects, especially the most important land management, general administration and police, have so far been transferred* to the three HDCs since the signing of the Accord. *Election of the HDCs is yet to be held* and a Voter list with only the permanent residents of the CHT, to be certified by the Circle Chiefs, is yet to be prepared for the election of HDCs.
- iv. Land Commission is yet to commence its function and its Act is yet to be amended in the light of the Accord. This has not only kept land disputes unresolved but also opened the floodgates of new land disputes to emerge, making things more complicated for smooth resolution.
- v. Only 66 temporary army camps including a brigade out of 543 camps were withdrawn so far. Rest of the temporary camps is yet to be dismantled. Moreover, security operation codenamed 'Operation Uttaron' which was resorted to in 2001 to tighten security noose, is still in operation.¹
- vi. 9,780 families out of 12,222 families of *repatriated Jumma refugees* are yet to be reinstated in their lands, homesteads and orchards and 40 villages of the returnees are still under the occupation of the settlers.
- vii. More than ninety thousand *internally displaced families* have not yet been rehabilitated.
- viii. Though grand alliance government reconstituted the CHT Accord Implementation Committee, but since its inception it could not come up with anything concrete to help the implementation process of the Accord.
- ix. The decision to withdraw Cases filed against PCJSS members and those permanent residents who were associated with PCJSS prior to the signing of the Accord are yet to be carried out.²

¹ PCJSS Report On the Implementation of the CHT Accord, 2009

² PCJSS Report On the Implementation of the CHT Accord, 2009

The implementation of the CHT Accord is crucial for unhindered development of the country. For the peace to thrive and stability to continue in a developing country like Bangladesh, it is the call of the hour to press for all the good will at the disposal of the state to materialize everything that the Accord stands for. For good governance and rule of law to prevail in the CHT, there is no option but to ensure that CHT Accord is honored and is given a fair play. The CHT indigenous peoples may be smaller in number but they have diversely distinctive characteristics of their own which adds to the diversity of the country to the pride of the entire nation. In diversity flourish democracy and its prized values. When the bigger and the stronger communities can thrive and prosper and can live in their own way, with their own faith in their land then what is the wrong with the smaller ethnic groups if they demand to live in their own way in their own land with their own faith and way of life. The ethno-diversity of the CHT needs to be preserved and nourished to uphold the secular character of the country that Bangladesh takes pride of historically.

This aspiration of the indigenous peoples is not demonstrative of the breaking apart of the polity but it presages the development of a strong pluralist society which can best serve as the cradle of popular democracy, and for which the people of Bangladesh fought and sacrificed for years. The respect to the 'protective safeguards' for the ethnic minorities in Bangladesh will build confidence in all to live together in peace which, in turn, will add strength to the unity that the country needs desperately to flourish in prosperity to improve the quality of life of its 160 million people who continue to languish in poverty.

HIGH COURT VERDICT ON CHT ACCORD AND CHT REGIONAL COUNCIL

On 12-13 April 2010 the High Court (HC) Division of Bangladesh Supreme Court, in a verdict, declared the Chittagong Hill Tracts Regional Council (CHTRC) Act 1998 as well as some provisions of the Hill District Councils (HDCs) Acts unconstitutional. The HC, however, announced judgement on the CHT Accord that it being political in nature, an accord with the belligerents could not be reviewed judicially.

It is notable that the Accord popularly known as "CHT Peace Accord" was signed between the Government of Bangladesh (GoB) and Parbatya Chattagram Jana Samhati Samiti (PCJSS), the then lone political party of indigenous Jumma peoples in CHT on 2 December 1997 with an aim to resolve CHT problem by political and peaceful means. The Accord stipulated provisions to strengthen special administrative system in CHT with CHT Regional Council and three HDCs.

One writ petition against the CHT Accord, CHTRC Act and HDCs Acts was filed in 2000 by Badiuzzaman, a Bengali settler in the CHT, and the other one by Tajul Islam, a pro-Jamaat-E-Islami lawyer challenging the legality of the CHT Accord was filed with the High Court in 2007.

Barrister Rokan Uddin Mahmud and Advocate T H Khan placed submissions as amici curiae (friends of court) while Dr Kamal Hossain and Barrister Sara Hossain argued for the CHTRC, one of the parties of these cases besides the government, to the HC.

Barrister Moudud Ahmed and Barrister Abdur Razzaq moved for the petitioners while Barrister Imran Siddiq, Barrister Belayet Hossain and advocate Tajul Islam assisted them.

Additional Attorney General Murad Reza and Assistant Attorney General Protikar Chakma stood for the government.

High Court verdict: After a prolong hearing, the HC Bench of Justice Syed Refaat Ahmed and Justice Moyeenul Islam Chowhury announced judgement on these cases, on 12-13 April 2010 stating that the court observed the CHTRC Act 1998 was unconstitutional for it violated the 'characteristic of the unitary structure of the state.' Same way the HC declared Section 4(6), 17, 32(2), and 62(1) of the Rangamati Hill District Council (HDC) Act 1989, Khagrachari HDC Act 1989 and Bandarban HDC Act 1989, as amended in 1998 in accordance with CHT Accord saying that the amended provisions violated the 'characteristic of a unitary state.'

Section 4(6) of the HDC Acts narrates, "Whether a person is a non-tribal or not and, if so, which community he is a member of, shall be determined, subject to his producing a certificate from the concerned Mouza Headman/Union Council Chairman/Municipality Chairman, by the concerned Circle Chief and without a certificate in this connection being received from the Circle Chief, no person shall be eligible as a non-tribal to be candidate for the post of a non-tribal member".

According to Section 17 of the Acts, no people can be enrolled on the electoral rolls for the elections to the HDCs if they are not permanent residents of the district concerned.. In this connection it is noted that section 3 of Part 'B' of the Accord narrates that "Non-tribal Permanent Resident" shall mean a person who is not a tribal and who has lands of lawful entitlement in the hill districts and who generally lives in the hill districts at a specific address.

Section 32(2) of the HDCs Acts narrates that indigenous persons would get preference for the appointment of Class III and IV employees in the HDCs.

Section 62(1) of the HDCs Acts empowers the HDCs to recruit sub-inspectors and other police personnel below the rank of sub-inspectors with preference to the indigenous persons of the district concerned.

High Court Guidelines: In the judgment, HC issued five guidelines to the government. In one of the five guidelines of the judgment, the HC bench said it has found that the CHT Regional Council Act violated some articles of the constitution but it is still up to the government to form public statutory institution comprising of entirely nominated members as part of the peace process.

The court said that it was certainly an irony of matter that the peace process, aimed at democratic governance, had not been able to ensure the practice of democracy in CHT. However, the democratic governance in the CHT had been the lifeblood of the peace process and that should be encouraged in all earnest.

With regard to the backward section of citizens stated in the constitution, the court said that it was the government's responsibility to adopt a method and procedure, which would be reasonable and convenient for application of it to the indigenous peoples of CHT as well..

The court also said that the peace process has to be pursued against the backdrop of geo-strategic consideration and the historical circumstances under which the conflict arose and was brought to an end in 1997.

Appellate Division stays the HC verdict: However, the Appellate Division of the Supreme Court stayed the HC verdict on 15 April 2010 for six weeks. The chamber judge of the Appellate Division passed the order after hearing a provisional petition filed by the government, who stated to prefer an appeal against the verdict. Later the stay order of the Appellate Division was extended till regular appeal.

High Court verdict and relevant issues: Most of the constitutional experts said that the HC verdict was fully exparte. HC failed to consider the distinct characteristics and administrative background of the CHT. They said that the judgment would hamper the CHT peace process and create complexities in the functions of CHT regional administration. They also argued that the peace process and stability in CHT would be effected following the verdict.

Experts said that CHTRC formed in 1999 has been created as a special administrative unit under Articles 59 and 60 of the Constitution in furtherance of the goals of local government laid down in Articles 9 and 11. To protect the special rights of the indigenous people in CHT, the CHTRC has been given more power than other administrative units of local government in other parts of Bangladesh.

Such enhanced powers for similar reasons were earlier also given to three HDCs of Rangamati, Bandarban and Khagrachhari under three separate Acts in 1989. The CHT Regional Council basically coordinates the activities of the HDCs. It also provides recommendations to the GoB on matters relating to CHT.

The CHTRC does in no way resemble any organ in a federative unit e.g. a province in a federal state. It does not violate the unitary characteristic of the state or GoB. The CHTRC has only been given special territorial jurisdiction and powers as a special administrative unit, for which the Parliament is empowered under the Articles 59 and 60.

The special rights of the indigenous peoples relate mainly to their rights on land. Outsiders are not allowed to settle or occupy lands in CHT without the permission of the HDCs or the CHTRC. This is not a creation of the Accord. This was long in existence, recognised both by custom and legislation prior to the Accord.

The provisions of the Accord have been argued to be legitimate rather than violation of equality, equal opportunity and property rights clauses (Articles 27, 29 & 42) of the Constitution. Violation of Article 36 on freedom of movement has also been alleged. In fact, movement to CHT has not been barred at all. Of course, strict control has been imposed on further permanent settlement by outsiders in CHT in order to protecting rights of the indigenous peoples on their own lands in the region.

The exceptions and restrictions have been imposed under the authority of the Constitution itself, and necessarily relying on the qualifying Article 36 clause "subject to any restrictions imposed by law" put before the relevant Articles of the Constitution, or that nothing in the law can prevent the state from making special provisions to protect the interests of any backward class or group of people. This also applies to representation of the indigenous tribes enhanced in the HDCs and CHTRC and reservation of the top posts exclusively for them.

Whatever exceptions have been made in the Accord and in the subsequent enactments have been made to recognise and protect the long established special rights and status of the indigenous people. These have been done within the concept of the local government and under the relevant provisions of the Constitution with their liberal but permissible interpretations.

GOVERNMENT FORMS "STRATEGIC MANAGEMENT FORUM" TO OVERSEE CHT SITUATION

Government of Bangladesh decided to form a "Strategic Management Forum" under a minister or an adviser with the CHT Affairs Ministry, Home Ministry, Armed Forces Division, Forest Department, concerned Circle Chief, intelligence agencies in order to curb violence in the CHT and to oversee government development activities in this region. It is reported that on 5 May 2010 the plans were placed at a review meeting on the situation in the CHT chaired by Prime Minister Sheikh Hasina.

It is learnt that the plans include rehabilitation of families affected by ethnic violence under 'ashrayan' project, readjustment of the boundaries of the three districts, transferring Baghaichari upazila to Khagrachari district from Rangamati district, curbing poppy cultivation, rehabilitation of poppy growers, holding elections of the Hill District Councils and the CHT Regional Council after earliest completion of the High Court judgment, bringing the regional political parties under registration and legal compliance and regulating the destabilising activities of the United People's Democratic Front (UPDF) etc.

Leaders of the CHT and citizens of the country sharply criticised this government plans saying that the plans contained elements that go against the spirit of the CHT Accord. They said that the government took the plans to pressurise the regional political parties to go closer to the national political parties and also to create scope for the national political parties to increase their activities in the CHT. They also expressed concern that the plans might pave the way for greater military supervision in the CHT.

AUDIT ON THE IMPLEMENTATION OF THE ACCORD BY CLAUSE

When chauvinism digs deep in the mindset eclipsing conscience, and reason fails to contain its proliferation, mankind bleeds and in consequence smaller cultural and linguistic groups are fated to face inevitable disintegration. The history of mankind, through the ages, has more than once vindicated this irrevocable verity of history. Many races with smaller population across the globe with their diverse culture and heritage either have perished in the face of brutal advance by the bigger and superior races or have just melted away in submission. Similarly, the ethnic minorities living in the CHT and in the plains have also not succeeded, as was in the past, to revert this historic process though the savagery of ancient and medieval ages, in many aspects, has given way to growing liberalism and tolerance of the twentieth and twenty first century. The CHT indigenous peoples, alarmed at the increasing incidences of denial of their rights they have been enjoying since the British colonial period by the successive governments in Pakistan and Bangladesh, turned desperate and took to arms to defend the rights acceded to them centuries back. The indigenous insurgency that stalked the region in a limited scale for about three decades has in the end terminated in an armistice declaring the CHT as the "tribal inhabited region" and acknowledging the necessity to protect its tribal character.

Soon after the Accord was signed, two bills on CHT Regional Council Act and the three Hill District Council (amendment) Acts, 1998 respectively were placed in the parliament and passed accordingly in April 1998. But the bills contained serious discrepancies with regard to some changes which were not consistent with the Accord. This wrongful departure of the bill, often described by many as intentional, has weakened the spirit of the Accord to a great deal. A review of the discrepancies sneaked in the amended bills is given below:

A. GENERAL

THE ACCORD:³ : 1. *Both the sides agreed to treat the CHT as the "Tribal Populated Region" and recognized the need to protect this character and attain the overall development of this region.*

Current status: There has not been any initiative by the government so far to uphold the *Jumma* national identity and to protect the *special character* i.e. the *tribal character* of the CHT region. On the contrary, various anti-jumma policies such as rehabilitation of the Bengali settlers brought in thousands from different plain districts for settlements in the CHT with the political design to unbalance the existing ethnic composition in favor of the Bengalis, supporting the settlers in carrying out communal attacks on the *Jumma* people, illegal land grabbing, inclusion of the Bengali settlers and non-indigenous outsiders in the voter list, issuance of permanent resident-certificate by DC and providing the Bengali settlers with employment and other opportunities including lease and settlement of land etc are adopted to destroy the *special character* of the region. Moreover, activities to incite communal frenzy in the CHT are being intensified through commissioning a communalist organization called Sama Adhikar Andolan (Movement for Equal Rights). There were serious attempts to provide ration to 28000 more settler families and to settle 10,000 more families in the Sajek area under Rangamati Hill District.⁴

Comment: Many government functionaries, at the local and national level, do not favor the idea of according protection to the special character of the CHT as the "tribal inhabited region" in Bangladesh.

THE ACCORD: 2. *Both the parties have decided to formulate, change, amend and incorporate relevant acts, rules and regulations as allowed by law as soon as possible in accordance with the consensus and responsibilities expressed in different sections of the Accord.*

Current status: The recommendations on the necessary amendment to the Electoral Roll Ordinance 1982, the Electoral Roll Rules 1982, the CHT Regulation 1900, and the Draft Rules on Social Afforestation 2001 and the Code of Conduct for the NGOs have already been placed before the government by the CHT Regional Council. But the government has not responded so far in this regard, except effecting some changes (some provisions are not indigenous friendly) on the Draft Rules on Social Afforestation 2001. There has been no substantial progress with regard to alteration, amendment and addition to other relevant CHT laws, regulation and practices in accordance with the CHT Accord.

Comment: The government is yet to come up with any measure to implement this provision. On the contrary, both the Acts of Regional Council and the three Hill District Councils, 1998, are continued to be violated by the government functionaries.

THE ACCORD: 3. *An Implementation Committee with the following members shall be formed to monitor the implementation process of this: a) A member to be nominated by the Prime Minister: Convenor; b) Chairman of the Task Force formed under the purview of the agreement: Member; c) President of Parbatya Chattagram Jana Sanghati Samiti: Member*

Current status: The Accord Implementation Committee, constituted in 1998, had met on 21 March, 16 April, 7 August and 2 November in the same year and again met twice in 2001 with the last ever meeting held on 1 July 2001.⁵ Interestingly, no proceedings or minutes were recorded and no steps had so far been taken to execute the decisions taken at these meetings. In fact, the committee totally remained inactive since 1998.⁶ The monitoring process of the CHT Accord implementation Committee discontinued since then. There was no such committee during the tenure of the four party alliances (2001-2006) and the military backed caretaker government (2007-2008). The grand alliances led by Awami League formed government following the general election held on 28 December 2008 and reconstituted, on 25 May 2009, the CHT Accord Implementation Committee with Mrs. Sajeda Chowdhury, the deputy leader in the parliament as its chairperson. Since then it held two meetings at Rangamati and in the parliament building on 19th August and 26th October 2009 respectively and discussed important issues like amendment to the CHT Land (Dispute Resolution) Commission Act 2001 in line with the recommendation of the CHTRC, handing over of transferred subjects to the HDC through the executive order instead of agreement between the respective ministry and the HDC, finalization of the Rules of Business of both the CHTRC and the HDCs, setting up of offices for the CHTRC, Task Force for the rehabilitation of the Internally Displaced People and the India Returnee Refugees, the CHT Land Commission,

³ The texts of the Accord are given in italics

⁴ PCJSS Report on the Implementation of the CHT Accord, 2009

⁵ Goutam Kumar Chakma, Senior member of RC

⁶ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issue of Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois, at Urbana Campaign, August, 2002

and appointment of necessary staffs, allocation of resources and provision of logistics, dismantling of all temporary camps and termination of Operation Uttoran etc.

Comment: Since the new BNP led government took power in 2001, it was not known if the old Accord Implementation Committee stood dissolved or not. Neither was it known if a new committee was formed with the change of government at the centre. On the contrary, the government, in total violation of the Accord, formed a Cabinet Committee on the CHT with Mr. Abdul Mannan Bhuiyan, the Minister for the Local Government & Rural Development at the head. The CHTRC had as many as 8 meetings with this Cabinet Committee. Following the discussions in these meetings it was decided to activate the Land Commission by bringing in necessary amendments in the Land Dispute Resolution Commission Act-2001, set up organogram and office for it, reorganization of the CHT Accord Implementation Committee and the Task Force Committee on the India Returnee Refugees and the Internally Displaced Persons, finalization of the Rules of Business of the CHTRC, placing of all the transferable subjects at the disposal of the HDCs, handing over of Cotton Development Board, Textile Vocational Institute and Horticultural Centre to HDCs and setting up of District Session Judge Court in the three districts. But nothing happened except appointment of Mr. Samiron Dewan as the Task Force Chairman and commissioning of the Courts of District Session Judge in the three districts. In reality, the implementation process of the Accord has remained frozen since it was signed in 1997.

THE ACCORD: 4. *The agreement shall come into effect from the date of its signing and execution by both sides. This agreement shall remain valid from the date it goes into effect until all the steps are executed as per the agreement.*

Current status: The Accord was in force from the date of its signing. But no formal official order, instruction, or notice was issued to the concerned ministries, departments and institutions and local authorities to carry out their functions in compliance with the provisions of the Accord. However, steps and measures inconsistent with the agreement have continued to be put into action immediately after the Accord was signed.

Comment: The government as one of the signatories to the Accord has not been sincere in complying with it.

B. THE HILL DISTRICT COUNCIL

THE ACCORD: *Both the parties agreed to change, amend, incorporate and repeal the Hill District Local Government Council Acts of 1989 (Rangamati Hill District Local Government Council Act 1989, Bandarban Hill District Local Government Council Act 1989, Khagrachhari Hill District Local Government Council Act 1989) and the various sections which were in existence, before this agreement came into force, as given below:*

1. *The word "Tribe" used in various sections of the Councils' Acts shall be retained.*
2. *The name "Hill District Local Government Council" shall be amended and this council shall be renamed as "Hill District Council."*

Current status: Amended and incorporated in the HDC Acts.

THE ACCORD: 3. *"Non-tribal permanent residents" shall mean a person who is not a tribal and has land of lawful entitlement in the hill districts and generally lives in the hill district at a specific address.*

Current status: While amending the Rangamati Hill District Local Government Council Act 1989 under the CHT Accord, the definition of "non-tribal permanent resident" was changed. The word "and" connecting the two phrases "who owns land in legal manner" and "who generally lives in a particular address in the Hill Districts" was replaced by "or" in the Act No. 9, 10 and 11 of the Hill District Council Acts 1998.

It was a breach of the concerned provision of the Accord. Later, it was amended in line with the Accord by an Act no XXIII of 1998 following a strong protest from the *Jumma* people and their organizations.

Comment: The motive to replace "and" with "or" in the definition was to include all the Bengali settlers and outsiders, who lived in a particular address under the category of 'non-tribal permanent residents' even though they do not own land in any legal manner. The existing ground practice being followed by the government officials are not to differentiate between permanent and non-permanent residents as far as Bengalis are concerned.

THE ACCORD: 4. a) *There shall be 3 (three) seats for women in each of the Hill District Councils. One third (1/3) of these seats shall be for non-tribal.*

Current status: Incorporated in the HDC Acts

THE ACCORD: b) *Sub-sections 1, 2, 3 and 4 of section 4 shall remain in force as per the original act.*

Current status: This provision is in force.

THE ACCORD: c) *The words "deputy commissioner" and "deputy commissioner's" in the second line of sub-section (5) of section 5 shall be replaced by "circle chief" and "circle chiefs".*

Current status: Incorporated in the HDC Acts

THE ACCORD: d) *Following sub-section shall be added to section*

4: Whether a person is a non-tribal shall be determined, along with the identity of non-tribal community he belongs to, by the concerned Circle Chief on the production of certificate from concerned Headman/Union Council chairman /Municipality chairman and no person can be a candidate for the office of the non-tribal member without a certificate from the concerned Circle Chief in this regard.

Current status: The provision has been included in the Hill District Councils Acts.

Comment: However, the authorities and concerned officials continue to interpret that this provision is applicable only to the election to the posts of the members of the Hill District Councils. The matter does not end there. The CHT Ministry, violating the Accord, issued an order (No CHTAM (P-1)-HDC/Certificate/62/99-587) on 21st December 2000, authorizing the DCs of the three Hill districts to issue "Permanent Resident Certificate". An executive order cannot override any law passed in the parliament. The CHT Regional Council strongly objected to this move of the CHT Ministry and accordingly a decision to cancel this instruction was taken at a meeting of the Advisory Committee on the CHT Affairs on 1 July 2001. But no order has so far been issued canceling this controversial instruction. Rather, an official letter No SHAPKM/CHISHIJ/MBBS, DDSCourse/Students Admission-31/2008/713.dated-31.09.2008 from the medical section of the Ministry of Health and Family Welfare to all the offices including the CHTRC, HDC, DC of the three hill districts asked all concerned to ensure that the intending tribal candidates seeking admission to all Government Medical and Dental Colleges must produce permanent resident certificate from both the Circle Chiefs and the DCs of the respective districts while the non-tribal candidates need to produce the same certificate from the DCs of the respective districts only. It clearly indicates that a tribal candidate needs to be certified by two persons and the non-tribal one from one person only. Consequently, the settlers and other Bengali outsiders are given with an opportunity to make use of these legal twists to gain access to employment opportunities, purchase or settlement of land in the CHT and quotas reserved for the *Jumma* students in higher educational institutions of the country. Taking advantage of this situation the Bengali population has grown in alarming proportion in recent years far outnumbering the indigenous population which stands at less than half of the total population in 2008 from 77% in 1978 in just 30 years time as against current more than 50% Bengalis whose figure stood in 1978 at only 23%.

There is no provision of law in the country empowering a DC in Bangladesh including three hill districts to issue such a certificate. The DCs are only authorized to issue citizenship certificates under the "Charter of Duties of Deputy Commissioners".

Sometimes back, Rangamati HDC and Khagrachari HDC issued appointment circulars for the posts of both Head teachers and Assistant teachers in government primary schools vide memo. no. RHDC/Edu-two-36/97 (4th Part) 473 dated on 19/9/2002 and no. 17-26(3)2000/2002-624(100)/HDC dated 18/9/2002 respectively demanding of the candidates to produce permanent resident certificate either issued by the DC or by the Circle Chief. There were serious and angry reactions from the *Jumma* people against this unwarranted exercise of authority by the DCs. The CHT Regional Council sent a letter to the concerned Hill District Councils and the CHT Affairs Ministry demanding correction in the appointment circular and to uphold the legitimacy and applicability of the permanent resident certificate issued by the Circle Chief as is provided in the Hill District Council Act. But the Ministry of CHT Affairs again issued an instruction which was very much similar to that issued on 21 December 2000 reaffirming the authority of the DCs of the three Hill Districts to issue "Permanent Resident Certificate" to all people in the CHT irrespective of their residential status in the region. But it did not come up with any explanation in defence of its action.

The DCs are mainly drawn from the ethnic Bengalis. Indigenous people being backward in all respect find it hard to get a berth in the country's elite administrative service that DCs generally come of. Due to the historic conflict between indigenous people and the Bengalis over the issue of land rights in the CHT, the DCs, of course with a few notable exceptions, are often found to sympathize with the Bengali causes because of their same ethnic background.

THE ACCORD: 5. *It is provided in section 7 that a person elected as chairman or member shall, before assumption of office, swear or make an oath before the Divisional Commissioner of Chittagong. This shall be amended to the effect that the members shall swear or make an oath before "a Justice of High Court Division" instead of "Divisional Commissioner of Chittagong".*

Current status: Incorporated in the HDC Acts as was sought in the Accord

Comment: Chairmen and members of the councils were not found swearing or making an oath before "a judge of the High Court Division" instead of the "Commissioner, Chittagong Division." This violation of the provision implies a superior standing of the administration at the local level.⁷

THE ACCORD: 6. *The words "to Divisional Commissioner of Chittagong" shall be replaced by "as per election rules" in the fourth line of section 8.*

Current status: "As per rule" was inserted in the amendment in place of "as per election rule" in the Accord

Comment: Use of the phrase "as per rule" gives the authority more manoeuvrability in respect of applying the law because as the law to be applied is not specific, the authority, if prejudiced enough, may feel applying laws which may prove useful to suit its purpose; whereas the phrase "as per election rules" points to the application of specific rules, i.e. election rules. It has weakened the strength of this provision.

THE ACCORD: 7. *The words "three years" shall be replaced by "five years" in the second line of section 10.*

Current status: Incorporated in the HDC Acts

THE ACCORD: 8. *There shall be a provision in section 14 that if the office of the Chairman falls vacant or in absence of the Chairman, a tribal member elected by other members of the Council shall preside and perform other responsibilities.*

Current status: Incorporated in the HDC Act as is in the Accord

THE ACCORD: 9. *The existing section 17 of the HDC Act shall be replaced with the sentences as mentioned below:*

A person shall, under the Act, be eligible to be enrolled in the electoral roll, if (1) He/she is a citizen of Bangladesh; (2) He/she is not less than 18 years of age; (3) He/she is not declared mentally unsound by any competent court; (4) He/she is a permanent resident of Hill District.

Current status: Amended as "A person shall be eligible to be enrolled in the electoral roll for Council's election, if he/she satisfies the four conditions mentioned above" and incorporated in the HDC Act.

Comment: The phrase "under the Act" has been replaced by "Council's election."⁸

This provision meant for preparing a voter list for CHT, based on conditions laid down in section 17 but the consequent amendment with the insertion of "Council's election", which was not in the Accord, did limit the scope of the application of the CHT electoral roll to council's election only.

Rule 18 of the HDC Act relating to election was amended in the form of rules 33, 34 and 35 of 2000 in complete disregard of the Accord. The inconsistencies in the amendment have not been corrected as of now. Later, the government made a 'Draft Rules on the Electoral Rolls' for the three Hill districts in 2000 and sent it to the Regional Council for its opinion. The Regional Council returned it to the government with its comments and recommendations. With the BNP led coalition that swept into power in 2001, whatever modest initiatives were taken by the previous government were stalled. However, the CHT Affairs Ministry in the face of repeated

⁷ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

⁸ <http://www.angelfire.com/ab/jumma/bground/british.html>

insistence from the CHTRC undertook an initiative to resolve the issue, and the Law Ministry sent the Draft Rule to the Prime Minister's Office after due scrutiny. But nothing was known of this Draft Rule since then.

Despite the fact that this provision has been incorporated in the HDC Acts, it has come to be flouted constantly by the government which is one of the signatories to the historic CHT agreement. In complete violation of the CHT Accord and three Hill District Council Acts the voter list in the CHT that included non-permanent Bengali residents as voters was prepared. CHT Accord as well as the three HDC Acts provide that the voter list in the CHT shall be prepared with the permanent residents of the CHT region only. A non-tribal in the CHT is eligible to become a permanent resident of this region when he owns lawful land property and lives here at a permanent address. But many non-permanent residents who frequent to CHT and spend months on various professional call here but do not make CHT as their permanent place of residency are included in the voter list to outnumber the *Jumma* voters.⁹

Bengali residents (settlers) not less than 18 years of age and in some cases just above 12/13 years of age were fraudulently included in the voter list prepared from 15 May to 24 June, 2000. Out of some 400,000 Bengali voters in the three Hill districts, more than 300,000 are the non-permanent Bengali settlers and outsiders from other plain districts.¹⁰ Apart from that there are hundreds of thousands of non-indigenous plain dwellers who secretly infiltrated into the CHT individually or in groups over the recent years, illegally occupied lands and settled in the CHT with behind-the-scene support from the government functionaries.¹¹ In addition to this, there are hundreds of thousands of military and paramilitary (BDR, VDP, APBN) personnel serving temporarily in the CHT. Above all, thousands of Bengali outsiders are engaged in various jobs and other economic activities in the CHT. All of them were illegally included in the said voter list.

The Election Commission declared that the said voter list would be used in all elections including the parliamentary one except that of the Hill District Councils and the CHT Regional Council for which a new separate voter list would be prepared in line with the Clause 9, Part B of the CHT Accord. It can be mentioned here that the opinion of the Election Commission is erroneous and unconstitutional as the Constitution of Bangladesh does not admit of more than one voter list for all elections.

On the question of preparing a voter list with the permanent residents of CHT a memorandum objecting to the Election Commission's said notification was sent to the Prime Minister, CHT Affairs Minister, Law Minister and the Election Commission. The Election Commission informed that it was not possible to make a voter list as demanded by the CHT Regional Council without amendment to the concerned Acts. Having studied the Constitution of Bangladesh, Ordinance on Electoral Rolls 1982 and the Rules on Electoral Rolls 1982 with great care, the CHT Regional Council again sent its opinion on the subject to the Prime Minister Sheikh Hasina and Law Minister stating that there was no legal obstacle in making a voter list with only the permanent residents of the CHT. But the government has not taken any initiative so far in this regard.

The CHT voter list prepared by the Election Commission in the year 2000 and 2007-08 was not in conformity with the Accord, Hill District Councils and CHT Regional Council Act, Article 119 and 122 of the Constitution of the People's Republic of Bangladesh, Electoral Rolls Ordinance 1982 and the Rules on Electoral Rolls 1982.¹² Even when updating the voter list commencing from 15th June 2009, scores of Rohingyas in Lama, Alikadam and Nakhyongchari upazila were included as voters.¹³

Clause 2 (d) of Article 122 of the Bangladesh Constitution provides that *"A person has the right to be included in the voter list of a constituency determined for parliamentary elections, if he/she is a resident of that constituency or considered to be a resident of that constituency by law"*. Again section 4 of the Electoral Rolls Ordinance 1982 lays down that "a person shall be considered to be a resident of that constituency where he/she usually or generally lives". Section 8 (2) further states that a government official or employee or a person in government office engaged in service in a constituency (other than his/her own) can be included in the voter list of that constituency provided that he/she applies for it and subject to the permission of the Election Commission. Therefore, in the light of the above sections there is no legal bar to make a voter list for the HDCs and CHTRC as

⁹ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of Implementaion of the Chittagong Hill Tracts Accord', Research of Program in Arms Control, Disarmament, and International Security-University of Illinois of Urbana-Campaign

¹⁰ PCJSS Report on the Implementation of the CHT Accord, 2009

¹¹ Dr. Imtiaz Ahmed. A Overall Review of the Problems of the CHT & Thought for Solutions: A Study, Department of International Relations, University of Dhaka, 1996

¹² The PCJSS report on the Implementation of the CHT Accord, 2009

¹³ Bengali daily Jugantar, October 8, 2009

well as for other elections in the CHT with only the permanent residents of the CHT excluding the non-permanent residents.¹⁴

While voter listing was on for election to the 9th parliamentary election, the CHT Ministry issued a government order no CHTAM (P-1)-Ranga/Law-80/2000-158 to CHTRC and three HDCs asking for their cooperation in the voter registration process. The order did not contain any instruction to make voter list with only permanent residents of CHT. On the contrary, the order carried in a language which sounded intimidating with an inherent warning that action would be taken as per ordinance/law/rule in the event of failing to cooperate, or showing laxity and negligence in this respect. The 14 Party Coalition (Which formed the government after winning the 29th December 2008 election under the banner of Grand Alliances) in their proposal on the reformation of Election Commission and the Election System also proposed to make a voter list for CHT with the inclusion of the permanent residents of that region only. It, therefore, remains to be seen if the present government lives up to the promise it made with regard to making a separate voter list for the CHT.

THE ACCORD: 10. *The words "determination of electoral constituency" shall be added in the sub-section (2) of section 20 of the HDC Act.*

Current status: Amended with words "determination of election constituency"

Comment: The word "electoral" has been replaced by "election"

THE ACCORD: 11. *There shall be a provision in sub-section (2) of section 25 stating that the chairman and in his absence a tribal member elected by other members shall preside over all the meetings of the council.*

Current status: Incorporated in the HDC Act

THE ACCORD: 12. *As the entire region of Khagrachhari district is not included in the Maung circle, the words "Khagrachhari Maung Chief" in section 26 of Khagrachhari Hill District Council Act shall be replaced by the words "Maung Circle Chief and Chakma Circle Chief." Similarly, there shall be scope for the presence of Bomang Chief in the meeting of Rangamati Hill District Council. In the same way, there shall be provision that the Bomang Circle Chief can attend the meetings of Bandarban Hill District Council meetings if he wishes or is invited to join.*

Current status: Amended using the words "Khagrachhari Mong Chief, Rangamati Chakma Chief and Bandarban Bohmong Chief" in the provision.

Comment: The names of "districts" instead of "circles" have been used in the amendment. This will contradict the boundaries of the Circles as the Circle boundaries are completely different from those of the districts.¹⁵

THE ACCORD: 13. *In sub-section (1) and sub-section (2) of section 31 there shall be a provision that a chief executive officer equivalent to the status of a deputy secretary shall be the secretary in the Council and there shall be provision that the tribal officials would be given priority for this post.*

Current status: Amended as proposed

Comment: However, there has not been a single Chief Executive Officer in the HDCs who was drawn from the tribal community since the inception of HDCs in 1989. The government often appoints, on contract basis, from among the retired bureaucrats to higher positions in the service of the republic for better execution of the government policies. In the same manner, the government can go for appointing the retired *adivashi* high government officials on contract basis to the executive positions of the CHTRC and the HDC if the present available *adivashi* civil servants in the BCS cadre fail to meet the conditions necessary to become Executive Officers of these bodies.

THE ACCORD: 14. *a) There shall be a provision in sub-section (1) of section 32 that for the proper conduct of its affairs the Council may, with the approval of the government, create posts of various categories of officers and employees.*

Current status: Though the provision was amended as it was intended in the Accord, but the HDCs and the national government are yet to implement it.¹⁶

¹⁴ The PCJSS report on the Implementation of the CHT Accord, 2009

¹⁵ <http://www.angelfire.com/ab/jumma/bground/british.html>

¹⁶ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

THE ACCORD: *b) Sub-section (2) of section 32 shall, by amendment, be made as follows:*

The Council can, in accordance with regulations, appoint class three and class four employees, and can transfer, suspend, dismiss, remove or can impose any other punitive action on them. However, it was provided that the priority shall be given to the tribal inhabitants in case of such appointments.

Current status: This provision has been incorporated in the HDC Acts but has not been executed fully.¹⁷

THE ACCORD: *c) There shall be provision in the sub-section (3) of section 32 stating that:*

The government can, in consultation with the Council, appoint officers to other posts.

d) According to sub-section (4), the government shall transfer the said officers under sub-section (3) and can transfer, suspend, dismiss, remove or can impose any other punitive action on them as per regulation

Current status: Incorporated in the HDC Acts but government never consults the councils before making such appointments.¹⁸

Comments: As a result of the inclusion of two sub clauses separately in the amended bill, the government can seek the advice of the HDC while making appointment of officers (1st and 2nd class officers) to the council¹⁹ but the council does not reserve the right to take any punitive actions against them.

On the whole, from the implementation point of view these provisions have not been carried out as intended till today. As a result, the officials and employees of the district and upazila (sub-district) level administration are predominantly non-locals and non-indigenous people. They run their administration according to their mindset which is mostly toned up by the decades of belligerency between the indigenous peoples on the one hand and the non-indigenous dominated government forces on the other. It is also a reality that most of these non-indigenous officials and employees put up strong opposition to the implementation of the Accord. Appointment of *Jumma* officers and employees in the local administration is hindered as a result. The entire administrative weight, both civil and military, is put to use to support the *settlers'* interest in the CHT.

THE ACCORD: *15. In sub-section (3) of section 33 "as per regulation" shall be mentioned.*

Current status: Included in the HDC Acts

THE ACCORD: *16. The words "or any other way determined by the government" appearing in the third line of sub-section (1) of section 36 shall be deleted.*

Current status: The amendment sought has been implemented.

THE ACCORD: *17. a) The original law shall be in force in the fourth paragraph of sub-section (1) of section 37.*

b) "As per rules" will be included in Sub-section (2), sub-sub-section (d), of section 37.

Current status: Amended accordingly and inserted in the HDC Acts.

THE ACCORD: *18. Sub-section (3) of section 38 shall be repealed and by amendment, the sub-section (4) shall be framed as follows:*

*At any time before the expiry of the financial year the council may, if deemed necessary, prepare and approve a budget for that financial year **and a transcript of it shall be sent to the government.***

Current status: Amended but with the addition of the line in bold italics which was not in the original amendment sought. It demands of the council an obligation to submit a transcript of the budget it prepared.

THE ACCORD: *19. In section 42 the following sub-section shall be added:*

The Council shall be competent to prepare, undertake, and implement with the fund received from the government, development projects on any subjects placed under the council and all the development programs initiated at the national level shall be implemented by the concerned ministry/department through the Council.

Current status: This provision was not rightly phrased in the Act No. 9, 10 and 11 of Hill District Council Act 1998 while amending the Hill District Local Government Council Act 1989 in line with the CHT Accord.

¹⁷ Op. cit.

¹⁸, Jatindra Lal Tripura, ex-HDC chairman, Khagrachari Hill District, shared the view during an interview with this author

¹⁹ <http://www.angelfire.com/ab/jumma/bgground/british.html>

The proposed provision of section 42 was originally phrased in one sentence but it was split into two sub-sections in the amended form. The amendment appeared in sub-Section (1) of section 42 *"The Council shall be competent to prepare, undertake, and implement with the fund received from the government, development projects on the subjects transferred under Section 23 (b)"* was carried out as desired. But the amendment that was pressed in sub-section (4) stood totally in contrast to the provision of the agreement:

THE ACCORD: *"(4) All development programs undertaken by the government at national level on any subject placed under the Council shall be implemented by concerned ministries, departments or institutions through the Council".*

A close examination of the amended sentence appeared in section 19 clearly shows that in sub-section (4) an extra phrase "on any subject placed under the council" was added in the amendment after the line "All development programs undertaken by the government at the national level". This extra phrase was not in the Accord. As a result the government is not obliged to execute, in the CHT, any developmental program initiated at the national level through the Councils as was originally agreed in the Accord.

The government was pressed again and again to amend the said contradictory provision in line with the CHT Accord. Finally, only the Sub-clause (2a) was amended in accordance with the Accord in the Act no. 29, 30 and 31 of the Council Act 2000 while sub clause (4) remained unchanged.

Comment: The amendment that was brought about focused the role of the HDC on the development projects under different transferred subjects only, leaving all other development programs in the hill districts taken at the national level out of its purview. Therefore, by refusing to amend sub clause (4) which stipulates that "all the development programs initiated at the national level shall be implemented by the concerned ministry/department through the Council", the implementing role of the HDC, in total violation of the Accord, over the development programs initiated at the national level for CHT has been curbed.

THE ACCORD: 20. *The word "government" placed in the second line of sub-section (2) of section 45 shall be replaced with the word "Council"*

Current status: Amended accordingly

THE ACCORD: 21. *The rules of section 50, 51 and 52 shall be replaced by the following enactment:*

"The government, if deemed necessary, may advise or order the Council, in order to ensure conformity with the purpose of this Act. If the government is satisfied with definite proof that anything done or intended to be done by the Council, or on behalf of the Council, is not in conformity with law, or contrary to public interest, the government may seek information and clarification and give advice or instruction to the Council on the concerned matters in writing."

Current status: The amendment was made in the following manner:

"The government shall have the rights to order or advise the HDC in case of necessity to ensure conformity of the functions of HDC with the purpose of this Act. If the government is satisfied that anything done or intended to be done by the HDC or on behalf of HDC is not in conformity with law or contrary to public interest the government may seek information and clarification and give advice or order to the HDC on concerned matters in writing and HDC shall be to make available information and clarification and implement the order and advice."²⁰

Comment: The words "definite proof" in the third line of the proposed amendment were dropped in the amended bill and one additional line "HDC shall be to make available information and clarification and implement the order and advice", which was not proposed in the Accord, was added. As a result the government does not need any definite proof but only satisfaction is enough to call for information or clarification from the HDC on concerned matter. Also consequent upon the amendment, HDC is bound to carry out the order or advice of the government sealing altogether the scope for HDC to explain its position on the matter that the government took exception of. Moreover, the original text of this rule begins as follows: "The government may, if deemed necessary, advise or order the Council...." This line is replaced in the amendment as "The government shall have the rights to order or advise the HDC...." Of the two lines quoted above, the 'first line' as appeared in the Accord presents a softer approach of the government in dealing with the council while the 'other line' as inserted in the amendment is expressive of domineering dictation to the council.

²⁰ <http://www.angelfire.com/ab/jumma/bgground/british.html>

THE ACCORD: 22. *In sub-section (3) of section 53, the words “after the expiry of the period of being defunct” shall be omitted and the words “within ninety days of cancellation of the council” shall be inserted before the words “this Act”.*

Current status: Amended with the addition of this phrase “is published in the gazette” after the words “within ninety days of cancellation order of the council”, in violation of the Accord.

Comment: The provision in the amended form will surely delay beyond ninety days the reorganization of the council by as many days as it takes for gazette notification.

THE ACCORD: 23. *The words “of the government” in the third and fourth lines of section 61 shall be replaced with the words “of the ministry”*

Current status: Amended with the addition of words “or Division” after the words “of the ministry”.

Comment: This amendment has brought the HDCs under the jurisdiction of the “Division” of the ministry, though the HDCs are answerable as per the Accord to the CHT affairs Ministry only.

THE ACCORD: 24. *a) By amendment, sub-section (1) of section 62 shall be made as follows:*

Notwithstanding anything contained in any Act for the time being in force, all members of the rank of Sub-Inspector and below of Hill District Police shall be appointed by the Council in manner laid down by regulations, and the Council may transfer and take disciplinary action against them as per procedure laid down in the regulations; provided that in the matter of such appointment tribal of the district shall be given priority.

b) The words “subject to the provision of all other laws for the time being in force” placed in the second line of sub-section (3) of section 62 shall be substituted by the words “as per rules and regulation”.

Current status: This provision has been included in the HDC Acts but it is yet to be executed.

Comment: Even after eleven years since signing the Accord the government of Bangladesh could do nothing to transfer concerned subjects and functions to the HDCs for implementation. The police are still continued to be controlled and the power is allowed to be exercised by the same authorities as before.

The provision of the Accord to give priority to indigenous peoples in appointment to the local police forces continued to be violated till to date. Proposals calling upon the government to post the indigenous police personnel on duty in the plains to CHT as a stop-gap measure to stem the fragile law and order situation from crumbling has not been heeded to so far.²¹ Of course, there have been some stray cases of such transfer which was not of any use or significance by any count.

THE ACCORD: 25. The words “providing assistance” in third line in section 63 shall be retained.

Current status: This provision was retained.

Comment: As there has not been any change in the police regulation accommodating HDCs authority to control the police forces, the HDC Chairman and its officers have nothing to do if the police officials fail to comply with providing assistance to the former in the application of their lawful authority.

THE ACCORD: 26. *Section 64 shall be amended as follows:*

a) Notwithstanding anything contained in any law for the time being in force, no land and premises including the leasable khas lands within the territorial boundaries of the Hill District shall be transferable by lease, settlement, purchase or sale without prior approval of the Council provided that this provision shall not be applicable in areas within the Reserved Forests, Kaptai Hydroelectric Project, Bethunia Earth Satellite Station, State-owned Industries and Factories and lands recorded in the name of government.

Current status: Incorporated as it is in the Khagrachari and Bandarban Hill District Councils’ Acts. But in the case of Rangamati Hill District Council, the words “local authorities” have been inserted after the words “in the name of the government”.

²¹ PCJSS Reports on the Implementation of the CHT Accord, 2009

Comment: The contradictory provision was finally amended in line with the Accord in the Act no. 29 of the Council Act under pressure from the CHT Regional Council and the PCJSS. However, the authority over the land management has not been transferred to the Hill District Councils.²²

THE ACCORD: *b) Notwithstanding anything contained in any law for the time being in force, no lands, hills and forests within the control and jurisdiction of the Hill District Council shall be acquired or transferred by the government without consultation and consent of the Hill District Council.*

Current status: Though provision has been included in the Act but the concerned authority is not respectful of complying with the law. It has been observed disturbingly that the DCs, contrary to the relevant provisions of the HDC Acts, are increasingly involved in acquiring and transferring lands though there was a CHT Ministry circular CHTAM (P-1)/HD/miscellaneous/85/2000/529 calling upon the DCs to stop such practice. The Forest Department, alongside, has come up with a program to acquire 217,790 acres of land (72,000 acres of land alone in Bandarban Hill district) for afforestation.²³ This scheme by the government has put the Khyangs, one of the smallest indigenous communities of the CHT who are also the foremost among disadvantaged and deprived of the hill people, to virtual eviction from their ancestral domain of which they were parts for centuries.

The woe associated with land acquisition does not end there. The government has already acquired 11445.45 acres Sualok for establishing Infantry Training center. More lands are under process of acquisition: 19000 acres in Sualok for Infantry Training center, 9560 acres in Ruma for Para Commando and Aviation Training center, 181 acres for expansion of Bandarban Brigade, 5500 acres in Chimbuk for Eco-Park and Army Tourism center, 2600 in Bandarban-Lama for Air force training center, 50 acres of land for the expansion of Longadu Military Zone without any prior consent either from the Hill District Councils or from the CHT Regional Council as stipulated in the Accord. By now 11,445.45 acres of land have already been acquired in the Bandarban Hill District for the Artillery Training Center violating the condition of the Accord.²⁴

THE ACCORD: *c) The council can supervise and control functions of Headman, Chainman, Amin, Surveyor, Kanungo and Assistant Commissioner (land).*

Current status: This provision has been included in the HDC Acts, but the Councils have not officially been invested with any such power²⁵.

On the contrary the CHT Ministry vide a circular No. Pachabim (pa-1)-(tathya-17/2005/355 dated 21-11-2009 asked for the opinion of the chairmen of both the CHTRC and the three HDCs on a proposal adopted in the DC's conference-2009, to review section 64(2) of HDC Act 1989 authorizing the HDC to supervise and control the functions of the Headman, Amin, Surveyor, Kanunugo and Assistant Commissioner (Land).

THE ACCORD: *d) Fringe land in Kaptai Lake shall be given in settlement on priority basis to original owners.*

Current status: This provision has been included in the HDC Acts but the authorities concerned have not been observing it. On the contrary, hundreds of acres of land have been given in lease to the settlers²⁶.

THE ACCORD: *27. Section 65 shall be amended and formulated as follows: "Notwithstanding anything contained in any other law for the time being in force, the responsibility of collecting the Land Development Tax of the district shall rest in the hands of the council and the collected tax of the district shall be deposited in the fund of the council."*

Current status: Though the provision has been included in the HDCI Acts, but this power is still continued to be exercised by the Deputy Commissioners of the three Hill Districts and the fund collected is deposited with the accounts of the district administration.

Comment: The CHT Ministry vide a circular No. Pachabim (pa-1)-(tathya-17/2005/355 dated 21-11-2009 asked for the opinion of the chairmen of both the CHTRC and the three HDCs on a proposal adopted in the DC's

²² Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

²³ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

²⁴ PCJSS Reports on the Implementation of the CHT Accord, 2005, 2009

²⁵ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

²⁶ Ibid.

conference-2009, to review section 65 of HDC Act 1989, vesting the authority to collect land development tax with the HDC and to deposit the collected tax in the fund of the council.

THE ACCORD: 28. *Section 67 shall be amended and formulated as follows: "in the event of necessity for coordination in the activities of the council and that of the government authorities, the government or the council shall put up proposals on specific subject and the coordination of the activities shall be effected through mutual communications between the government and council."*

Current status: This provision has been amended and included in the HDC Acts as was intended but is yet to be exercised either by the government or the HDCs.

THE ACCORD: 29. *Sub-section 1 of section 68 shall be amended and formulated as follows: "With a view to carrying out the purposes of this act, the government may, upon consultation with the council, make rules through notification in the Government Official Gazette and the council shall have a special right to apply to the government for review of the said rules even after they are already made."*

Current status: This provision has been amended and included in the HDC Acts but the government is yet to make rules applicable to the Hill District Council.

THE ACCORD: 30. *a) The words "with prior approval of the government" in the first and second lines of sub-section 1 of section 69 shall be deleted, and after the words "may make" in the third line the following proviso shall be added: "provided that if the government does not agree with any part of the regulations made, it shall be competent to give advice or directive to the council towards amendments of the said regulations."*

Current status: This provision has been included in the HDC Acts but its application is yet to be tested.

THE ACCORD: *b) The words "conferment of the powers of the chairman on any officer of the council" in clause (h) of sub-section 2 of section 69 shall be deleted.*

Current status: This provision has been implemented.

THE ACCORD: 31. *Section 70 shall be deleted.*

Current status: This provision has been implemented.

THE ACCORD: 32. *Section 79 shall be amended and formulated as follows: "If, in the opinion of the council, any law made by the national parliament or any other authority as applicable to the hill district is one which creates hardship for the said district or is objectionable to the tribal, the council may, upon stating the cause of hardship or objection, apply to the government in writing for amending or relaxing the application of such law, and the government may take remedial measures in accordance with such applications."*

Current status: Amended and included in the HDC Acts. However, this legislative privilege is yet to be tested.

THE ACCORD: 33. *a) The word "supervision" shall be added after the word "discipline" in the schedule number one on the activities of the council.*

Current status: Amended and included in the Hill District Council Acts.

THE ACCORD: *b) In item no. 3 of the Council's activities, the following shall be added: "(1) Vocational education, (2) Primary education through mother tongue, (3) Secondary education."*

Current status: Amended accordingly and included in the HDC Acts. But no initiative has been taken to impart primary education through mother tongue. Vocational education was transferred but secondary education is yet to be handed over to the HDC.

THE ACCORD: *c) The words "reserved or" appearing in clause 6(b) of the Council's activities shall be deleted.*

Current status: This provision has been implemented. However, the subject of "development and conservation of forest not reserved by the Government" has not been transferred to the HDCs.

THE ACCORD: 34. *The following subjects shall be included in the functions and the responsibilities of the Hill District Council: a) Land and land management; b) Police (local); c) Tribal law and social justice; d) Youth welfare; e) Environmental protection and development; f) Local tourism; g) Improvement Trust and other institutions concerning local administration, other than Municipality and Union Council; h) Issuing license for local*

commerce and industries; i) Proper utilization of rivers and streams, canals and beels (low-lying marshy tracts) and irrigation systems other than water resources of the Kaptai Lake; j) Maintaining of the statistics of birth and deaths; k) Wholesale business; l) Jum cultivation.

Current status: Included, accordingly, in the HDC Acts, but except tribal law and social justice, and youth welfare none of the aforementioned subjects has been transferred to the HDCs as of now.

THE ACCORD: 35. *The following items shall be added to the subjects for imposition of taxes, rates, tolls, and fees by the council as stated in the second schedule: a) Registration fees of non-mechanical transports; b) Tax on buying and selling commodities; c) Holding tax on lands and buildings; d) Tax on selling of domestic animals; e) Fees for community adjudication; f) Holding tax on government and non-government industries; g) A specified part of the royalty on forest resources; h) Supplementary Tax on Cinema, Jatra (a form of theater), and Circus; i) Part of royalty received by the government against granting licenses or pattas (ownership rights to land) for the exploitation of mineral resources; j) Tax on business; k) Tax on lottery; l) Tax on catching fish.*

Current status: This provision has been included in the HDC Acts, but the power to exercise this provision has not been accorded to the HDCs.²⁷

C. CHITTAGONG HILL TRACTS REGIONAL COUNCIL²⁸

THE ACCORD: 1. *Subject to the amendment and addition of the various sections in the Hill District Local Government Council Act XIX, XX, and XXI of 1989, a Regional Council, comprising the local government councils of three Hill Districts, shall be formed for the purpose of making the Hill District Council more powerful and effective.*

Current status: Accordingly the three HDC Acts have been amended.

THE ACCORD: 2. *The chairman of this council whose status shall be equivalent to that of a state minister and who shall be a tribal shall be elected indirectly by the elected members of the Hill District Councils.*

Current status: This provision has been included in the CHTRC Act. The chairman is also a tribal and has been given the status of a state minister.

Comment: The incumbent chairman is not elected as the present council is an interim one which the government formed in exercise of the power provided in section 12 of the CHTRC Act. The election to this Council could not be held during the last 11 years due to non-holding of elections to the HDCs. As per rule the elected members of the HDCs shall elect the chairman and members of the CHTRC.

THE ACCORD: 3. *Twenty-two members including the chairman shall constitute the Council. Two-thirds of the members shall be elected from amongst the tribal. The Council shall determine its modus operandi. The constitution of the council shall be as follows:*

- a) Chairman— 1
- b) Members: male (tribal)— 12
- c) Members: female (tribal)— 2
- d) Members: male (non-tribal)— 6
- e) Member: female (non-tribal)— 1

Of the tribal male members 5 persons shall be elected from the Chakma, while 3 persons from the Marma, 2 persons from the Tripura, 1 person from the Murung and Tanchangya and 1 person from the Khyang, Chak, Khumi, Bawm, Pankhua and Lushai tribes respectively.

Of the non-tribal male members 2 persons from each district shall be elected.

Of the female tribal members, one shall be elected from the Chakma tribe while the other one shall be from the rest of the tribes.

Current status: Included in the CHTRC Act and implemented.

²⁷ Bushra Hasina Chowdury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

²⁸ Op. cit.

THE ACCORD: *4. Three seats for women shall be reserved in the council and one-third thereof shall be for non-tribal women.*

Current status: Included in the CHTRC Act and implemented.

THE ACCORD: *5. The Council members shall be elected in an indirect way by the elected members of the three Hill District Councils. The three HDC chairmen shall be the ex officio members of the council with the right to vote. The eligibility and non-eligibility of candidature for Council members shall be similar to that of the members of the Hill District Councils.*

Current status: Included in the CHT Act. The government in exercise of the power given in section 12 of the CHTRC Act 1998 nominated the CHTRC members as the election to the HDC has not been held.

Comment: The provision is yet to be put into action as the government lacks in sincerity and urgency to fully implement the Accord. The government can, if it so wishes, pursue the case in the High Court for its speedy disposal as the government is the main defender here.

THE ACCORD: *6. The tenure of office of the council shall be five years. The procedure and other matters regarding the preparation and approval of the budget of the council, dissolution of the council, framing of the rules of the council, appointment and control of the officers and employees, etc., shall be similar to the procedure and other matters as are applicable to the Hill District Councils.*

Current status: Included in the CHTRC Act but has not been implemented accordingly. It is 10 years since the rules for conduction of the CHTRC were framed and sent to the government for its opinion. But the government is yet to comment on this. The interim council constituted in place of regular elected council in 1999 continues to function for the last eleven years without break though the provision sets five years for one term of the council.

THE ACCORD: *7. There shall be in the Council a Chief Executive Officer of the rank of a joint secretary to the government and the tribal candidate shall get priority for appointment to this post.*

Current status: Included in the CHTRC Act and implemented accordingly.

THE ACCORD: *8.a) In case the post of chairman of the Council falls vacant, the members of the Hill District Council shall elect a chairman in an indirect way from among the tribal members for the interim period.*

Current status: Inserted accordingly in the CHTRC Act.

THE ACCORD: *b) In case the office of a member of the Council falls vacant for any reason, it shall be filled up by by-election.*

Current status: Inserted in the CHTRC Act. No office of the CHTRC members fell vacant as of now.

THE ACCORD: *9. a) The Council shall supervise and coordinate all the subjects vested in the Hill District Councils in addition to coordinating all the development activities carried out by the three Hill District Councils. In the event of lack of congruity or any inconsistency in the discharge of responsibilities of the three Hill District Councils, the decision of the Regional Council shall be deemed as final.*

Current status: Included in the CHTRC Act but is not being observed in practice as there has not been any corresponding change in the relevant section(s) of the HDC act purported to bring the HDCs under the supervision of RC. The three HDCs were non-cooperative with the CHTRC during the BNP (2001-2006) and the Caretaker Government (2006-2008), and even present grand alliance government.

THE ACCORD: *b) The council shall coordinate and supervise the local councils, including the municipalities.*

Current status: Included in the CHTRC Act. But the union councils along with other local government bodies, for example, the municipalities are not cooperative with the CHTRC as the Acts regulating union councils and municipalities have not been amended accordingly to accommodate the provision for RC supervision.

THE ACCORD: *c) The Council shall coordinate and supervise the three Hill Districts in matters of general administration, law and order, and development of the three Hill Districts.*

Current status: Incorporated into the CHTRC Act, but the district administrative authorities, police super in the three hill districts, and development authorities like the CHTDB continue ignore the CHTRC while performing their functions as the 1900 Regulations has not been amended to accommodate for CHTRC supervision.

THE ACCORD: *d) The Council shall coordinate the activities of the non-governmental organizations (NGOs), in addition to disaster management and conduction of relief programs.*

Current status: Incorporated accordingly in the CHTRC Act. However, the coordinating role to be performed by the CHTRC with regard to the NGO activities remains to be seen as of now. The disaster management and relief operation in the CHT, as in other parts of the country, is continued to be controlled by DC sidelining the CHTRC even 13 years after the Accord was signed. Thus the Ministry of Relief and Disaster management has continued to flout the Accord.

THE ACCORD: *e) Tribal law and social arbitration shall be under the jurisdiction of the Regional Council.*

Current status: Incorporated in the CHTRC Act. This customary prerogative of the RC is yet to be tested.

THE ACCORD: *f) The Council shall be competent to issue licenses for heavy industries.*

Current status: Included in the CHTRC Act. However, when the process of establishing a fertilizer industry in the CHT and installation of two more units in the Kaptai Hydroelectric project were in progress, the CHTRC was not consulted with.

THE ACCORD: *10. The Chittagong Hill Tracts Development Board shall discharge duties assigned to it under the general and overall supervision of the Council. The government, in appointing the chairman of the Development Board, shall give preference to the competent tribal candidates.*

Current status: Incorporated in the CHTRC Act. But the CHT Development Board (CHTDB) continues to disregard the authority of the CHTRC while discharging its functions. The government on the other, in complete disregard to the provisions of the Accord, appointed Abdul Wadud Bhuiyan MP from Khagrachari constituency as the chairman of the CHTDB. Though present grand alliance government appointed an indigenous MP named Bir Bahadur Shwe Sing elected from Bandarban constituency as chairman of the Board on 24 March 2009, but the Board continues to ignore the CHTRC's supervision.

THE ACCORD: *11. The Chittagong Hill Tracts Regulation of 1900 and other related acts, rules, and ordinances, if found inconsistent with the Hill District Council Acts of 1989, shall be removed by law as per the recommendations of and in consultation with the Regional Council.*

Current status: Included accordingly in the CHTRC Act. But the government has so far not taken any steps to do away with the inconsistencies in the above mentioned Acts and Regulations (for one such example please see the 'implementation status' of sub-section (b) of section 26 under the head 'B. Chittagong Hill Tracts Local Government Council/Hill District Council').

THE ACCORD: *12. Until the formation of the Regional Council through direct and indirect election, the government shall be competent to constitute an interim Regional Council and empower it to discharge the assigned responsibilities.*

Current status: Included in the CHTRC Act and an interim Council has also been formed.

Comment: But the Council has not been made effective till to date as the government has failed to invest it with necessary power as has been provided in the CHTRC Act.

THE ACCORD: *13. In making any law in connection with the Chittagong Hill Tracts, the government shall enact such law in consultation with and as per the advice of the Regional Council. If it becomes necessary to amend any such law or to make any new law that bears an adverse effect on the development of the three Hill Districts and the welfare of the tribal people, the council shall be competent to file a petition or submit recommendations to the government.*

Current status: Incorporated into the CHTRC Act as was sought in the Accord. But this legislative prerogative of the CHTRC largely remains untested especially in matters of such laws as are exclusively meant to deal with the CHT issues. Otherwise, It is not uncommon that the government, sometimes, without consulting the CHTRC makes, by gazette notification, national laws applicable to the CHT without taking the CHT perspective and its

distinctive character into account. For example, the government introduced the Speedy Trial Act 2003, Women and Child Repression Act 2003, Small Ethnic Groups Cultural Institute Act 2010 in the CHT without consulting the CHTRC. Enacting and introducing laws without an insight and understanding of the context may prove disastrous for the people for whom the laws are meant for. *Neither is the government amenable to any such recommendations submitted by the CHTRC on CHT issues.*²⁹

THE ACCORD: 14. *The fund of the Council shall be created from the following sources:*

- a) *Money received from the District Council Fund*
- b) *Money or profits received from all the properties vested in or managed by the council*
- c) *Loans and grants from the government and other authorities*
- d) *Grants given by any institution or person*
- e) *Profits earned from the investments of the Council Fund*
- f) *Any money received by the council*
- g) *Money received from other sources provided to the council as per the direction of the government*

Current status: Included in the CHTRC Act. But the government has not been very cooperative in playing supportive role to create such fund for the council.

D. REHABILITATION, GENERAL AMNESTY, AND OTHER MATTERS³⁰

In order that normalcy is restored both the parties to that end have arrived at the following consensus and agreed to undertake programs as given below in respect of activities and matters of rehabilitation, general amnesty, and allied issues:

THE ACCORD: 1. *An agreement, with a view to bring the tribal refugees staying in the Tripura State of India back to Bangladesh, was signed on March 9, 1997 at Agartala in Tripura State between the government and leaders of tribal refugees. The tribal refugees, in pursuance of that agreement, started to return to Bangladesh on March 28, 1997. This process shall continue without interruption, and the Jana Sanghati Samiti shall give all possible cooperation to that end. Measures to rehabilitate the Internally Displaced Persons of the three Hill District shall be undertaken through a Task Force after ascertaining their identity.*

Current status: a) The *Jumma* refugees numbering about 12,222 families with a total of 64,609 persons returned to the CHT from the Tripura State of India. But 9780 families could not go back to their own homesteads, farm lands and native villages as they could not be reinstated in their original/rightful lands which were already occupied by the settlers. The prospect of rehabilitation is shrouded in uncertainty since then. 40 *Jumma* villages are still under the occupation of the settlers. 890 families did not receive money to buy bullock for cultivation. 6 government primary schools shifted during the insurgency period to new places were not brought back to their original sites. 5 bazzars relocated to the places with settlers populations were not reinstated in their former locations. 7 temples remained under settlers' occupation.³¹

B) The Accord provided for the rehabilitation of the India Returnee Refugees (IRR) and the Internally Displaced People (IDP), after identifying them, through a Task Force. However, this task remains to be accomplished even after 12 years. The first Task Force formed immediately after the Accord was headed by Dipankar Talukdar, the then MP from Rangamati constituency and now heading the CHT Ministry in the capacity of a state minister, declared some 38,156 Bengali settler families along with more than 90,208 indigenous families as internally displaced people in the 11th meeting of the Task Force held unilaterally on 15th may 2000. The meeting was not attended by representatives of PCJSS and Returnee Jumma Refugee Welfare Association (RJRWA) who walked out of the 9th meeting of the Task Force held on 22 September 1999 in protest against tempering with the definition of the "Internally Displaced People" by some CHT Ministry official. They also issued a joint press release on the matter.

In June 2000 and September 2010, PCJSS submitted to the Prime Minister and the Convener of the CHT Accord Implementation Committee a memorandum calling for cancellation of the process of identifying the Bengali

²⁹ This is an allegation often made by the RC chairman in his speeches made on different occasion

³⁰ Bushra Hasina Chowdhury. 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord', Research of the Program in Arms Control, Disarmament, and International Security, University of Illinois at Urbana Campaign-August 2002

³¹ The PCJSS Report on the Implementation of the CHT Accord, 2009

settlers as internally displaced people and withdrawal of the letter dated 19th July 1998 issued to the Task Force by the Special Affairs Division instructing rehabilitation of the “internally displaced non-tribal persons”. It was also demanded for honorable settlement of the Bengali settlers outside the CHT.

The Task Force became dysfunctional as the term of the previous government ended on 13th July 2001. On a repeated demand from the PCJSS, the BNP government appointed, on 29th October 2004, Mr. Samiran Dewan as the chairman of the Task Force. The Task Force, after it was reconstituted, had four sittings on 22nd April, 27th May, 25th July and 21st November respectively in the year 2004. On 3rd June 2007, the Task Force had another meeting at the Khagrachari circuit house. However, these meetings could not make any breakthrough on the issue. On the contrary, Mr. Sontoshita Chakma Bakul, the leader of the Returnee *Jumma* Refugee Welfare Association, was arrested as soon as he emerged from the Task Force Committee meeting³² on charges not known to any. Moreover, despite any decision taken in the Task Force Committee meeting on the rehabilitation of 26 India Returnee Refugee families, arrangements were made through the Khagrachari HDC to rehabilitate them, in violation of the terms and reference of the Task Force Committee, on a land which belongs to one Ranajit Kumar Tripura, a member of the PCJSS.

The new government headed by the Prime Minister Sheikh Hasina reconstituted the Task Force on 23rd March 2009 by appointing Mr. Jatindra Lal Tripura, MP from Khagrachari constituency as chairman. The newly reconstituted Task Force had its first meeting on 5th October 2009 at the Khagrachari circuit house and decided on the agenda for the next meeting which included: determination of the process of identification of the internally displaced people and inclusion of the genuine IDP, 20 Point Package-Facilities, holding of monthly meetings of the Task Force, field visit by the Task Force, manpower, funds etc. On 27 January 2010 at 2.30 pm 2nd meeting of the Task Force on Rehabilitation of Returnee Tribal Refugees and Internally Displaced Persons was held at Khagrachari circuit house where Chairman of the Task Force Mr. Jatindra Lal Tripura MP presided over.

On 27 January 2010 2nd meeting of the Task Force was held at Khagrachari circuit house with Chairman of the Task Force Mr. Jatindra Lal Tripura MP in the chair. In regard to the identification of the IDPs, PCJSS representative Mr. Mr. Laxmi Prasad Chakma protested against the inclusion of the Bengalis settlers as IDPs. However, Divisional Commissioner of Chittagong division, representative of CHT Affairs Ministry, Member of the Task Force Md. Safi opposed it.

It is alleged that the CHT Ministry is unable to provide necessary funds to the Task Force. It remains to be seen if the present Task Force will be able to make any breakthrough in the stalemate created by “buy time” policy avidly practiced by the powerful coterie in the government in resolving the issues.

THE ACCORD: 2. *After the agreement signed between the government and the Jana Samhati Samity, and implemented, and the tribal refugees and the internally displaced tribal rehabilitated, the government, in consultation with the Regional Council to be constituted under this agreement, shall commence in the CHT the land survey as soon as possible and shall finally determine the land ownership of the tribal people through settling the land disputes following proper verification, and record their land and ensure their rights thereto.*

Current status: This is a crucial program which remains to be implemented as yet. It is a major provision in the agreement as claim to land and its ownership has turned into an explosive issue that often leads to communal clashes between the tribal and the settlers.

THE ACCORD: 3. *In order to ensure the land ownership of tribal families having no land or lands below two acres, the government shall, subject to availability of land in the locality, ensure settling two acres of land per family. In the event of non-availability of required land, grove-lands shall be arranged.*

Current status: This program has not been implemented as of now.

THE ACCORD: 4. *A Land Commission headed by retired justice shall be constituted for settlement of disputes regarding lands and premises. This commission shall, in addition to early disposal of land disputes of the rehabilitated refugees, have full authority to annul the rights of ownership of those hills and lands which have been illegally settled and in respect of which illegal dispossession has taken place. No appeal shall be maintainable against the judgment of this commission and the decision of this commission shall be deemed to be final. This provision shall also be applicable in the case of fringe-lands.*

³² PCJSS Report On the Implementation of the CHT Accord-2009

5. *The commission shall comprise of the following members: a) Retired justice; b) Circle chief (concerned); c) Chairman/representative of the Regional Council; d) Divisional commissioner/additional commissioner; e) Chairman of the District Council (concerned)*

Current status: A Land Commission has been formed accordingly. Justice Anwarul Haque Chowdhury was appointed as the chairman of this Commission on 3rd June 1999. But he died on 6th December in the same year before assuming his office. He was succeeded by Justice Abdul Karim who was appointed to the vacant post on 5th April 2000. But he assumed his office on 12th June 2000. However, he resigned his post on health ground following his visit to his office at Khagrachari. The post of the chairman was not filled since then though a secretary to the chairman was appointed later on. But nothing was done towards appointment of office staffs and provision of other logistics. The four party coalition government, immediately after assuming office, appointed retired Justice Mahmudur Rahman on 29th November 2001 without consulting the PCJSS and the CHTRC as required by the provision of the Accord. Justice Mahmudur Rahman also breathed his last in November 2007. The Caretaker Government led by Dr. Fakhruddin Ahmed never paid heed to the request made by the RC for filling the vacant post.

The new government, installed on 6th January 2009, announced the appointment of retired Justice Khademul Islam as the chairman of the Land Commission.

No sooner had he assumed his office, he started in a dramatic fashion. He undertook a lightning tour of the three hill districts from 3rd to 5th August 2009 and convened meeting of the Commission for exchange of views. He used the DCs of the three hill district to issue letter calling upon the members to attend the meeting which was totally irregular. For, the DCs are nobody of the Commission. The Accord provides that the secretary of the Commission shall convene the Land Commission meeting. But the chairman of the Commission unilaterally declared to conduct land survey in the CHT without a decision to that effect in any of the meetings (despite the fact that the meetings were irregular). He went further, visited Rangamati and Khagrachari hill district on 7th and 8th September respectively, assigned DC of Khagrachari hill district with the responsibility to act as secretary who convened meeting in one day's notice for the chairman of the Commission to share his views. He did not convene any formal meeting of the Commission. Rather, he declared in the meeting of the officials to decide on the procedures of land survey in 15 days' time and to complete the survey by 15 March 2009 beginning from 15th October 2009.

Despite the huge protest from the all sections of the citizens including CHTRC and PCJSS and also three circle chiefs, the Chairman of the CHT Land Dispute Resolution Commission justice Khademul Islam Chowdhury continues his unilateral and controversial activities. In mid-July 2010 the secretary of Land Commission issued a notice to the CHT Affairs Ministry and Land Ministry to conduct cadastral survey in CHT soon; otherwise the ministries would be charged non-compliance with court order.

Section 2 of the part D of the Accord clearly provides to conduct land survey after implementation of CHT Accord, rehabilitation of returnee refugees and IDPs, in consultation with the Regional Council, in order to determine the land ownership of the tribal people through settling the land disputes following proper verification, and record their land and ensure their rights thereto.

The decision by the Land Commission chairman to undertake land survey before resolving the land disputes is a clear violation of the provision of the CHT Accord. In any case he is not mandated to conduct land survey and the government cannot go for any form of land survey before finally settling the land disputes following proper verification, and record their land ownership and ensure their rights thereto.

Since after the appointment of present Chairman of CHT Land Dispute Resolution Commission, the only meeting was held on 27 January 2010 in Khagrachari. The meeting was ended without taking any concrete decision. On 14 March 2010 Secretary of Land Commission Md. Abdul Hamid issued public notice asking affected land owners to lodge application on land disputes with Land Commission. This notice was issued without the decision of the Commission.

The controversies centering on CHT Land (Dispute Resolution) Commission Act is yet to be resolved. It is to be noted here that on 12th July 2001 the Awami League led government hurriedly passed through a legislation titled "The CHT Land (Dispute Resolution) Commission Act 2001" without consulting the CHTRC as per the Accord just one day ahead of relinquishing their office. The said legislation contained as many as 19 provisions which are not consistent with the Accord and hence are unfavorable to the interest of the hill people. The CHTRC

presented to the government 19 point recommendations in 2001 seeking amendment to the provisions inconsistent with the Accord. Later, a meeting was held between Mr. Moudud Ahmed, minister for law and parliamentary affairs and J B Larma, chairman of the CHTRC to consider the recommendations. The meeting ended with a consensus on 18 recommendations. The lone recommendation that the government did not agree with was settlement of land dispute relating to fringe-land of the Kaptai Lake, though it was referred to in the Accord. However, it was agreed in the meeting to seek recommendation on this matter once again from the CHT RC in the next one month. The CHT RC submitted in April 2002 the recommendation to the government. Later, in a meeting held on 23 April 2003 between Mr. Moudud Ahmed, then law and parliamentary affairs minister and the CHTRC delegation, a consensus was reached on the recommendation. Thereafter, the Law Ministry vetted the Act. But then there was no further progress.

With the grand alliance forming a new government in January 2009, the CHTRC once again sent the recommendation to the government on 7 May 2009 for consideration. Accordingly a meeting presided by the land minister Mr. Rezaul Karim Hira was held with the CHTRC delegation in the land ministry on 26 August 2009. The three Additional District Magistrates from the three Hill Districts who were also called, against the rule, to attend the meeting opposed strongly the proposed amendments in the Land Commission Act 2001 despite the favorable stand taken by the representative from the Law Ministry. At last, the meeting ended without any conclusion. The drama that was enacted in the Law Ministry was irregular in the sense that opinion of the district level officers was sought in framing law by the Law Ministry is unprecedented and there can be no scope for fresh opinion after the vetting by the ministry itself.

Again, on 10 October 2010 an opinion-sharing meeting on Settlement of Land Dispute and Land Survey in CHT held in Rangamati chaired by the Land Minister Rezaul Karim Heera. Three MPs of the CHT region, CHTRC chairman, three HDC chairmen and three Circle Chiefs were present at the meeting. Decision was taken to amend the CHT Land Dispute Resolution Commission Act 2001 as per recommendations of the CHTRC. However, it is yet to be implemented.

In addition to the amendment of the Land Commission Act, there is the necessity of making the Rules of Business of the Land Commission for proper functioning of the Commission and its Secretary and other officials. Until the date no steps have been taken by the GoB about the Rules of the Business of the Commission.

The government will be ill advised if it is asked to press the CHT Land (Dispute Resolution) Commission Act 2001 into operation without effecting necessary amendments to remove the inconsistencies (with the Accord) that crept in the Act. It will complicate the existing land disputes which have already turned huge in dimension and enormity.

THE ACCORD: 6. a) *The tenure of office of the commission shall be three years. But its tenure shall be extendible in consultation with the Regional Council.*

b) *The commission shall resolve the disputes in line with law, customs and practices in force in the Chittagong Hill Tracts.*

Current status: No steps have so far been taken by the government to identify the customary laws and practices in force in the CHT.

THE ACCORD: 7. *The tribal refugees who took loans from government agencies, but could not utilize them properly due to a state of belligerency, shall be exempted from repaying along with interest.*

Current status: The stated position of the government is that the matter is under process in the Ministry of Finance. But the process seems to be an unending one. 13 years have gone by for the Ministry of Finance to issue an order condoning the loans as was promised in the Accord. The government is yet to write off the loans of 642 refugees.³³

With the BNP led Four Party Alliance government assuming office in 2001, a sinister move was initiated at the instigation of Abdul Wadud Bhuiyan to stop ration to the *Jumma* refugees. In a report Pprime Minister's office informed that the *jumma* refugees could no longer be provided with regular ration. Rather it needed to be mooted if something could be done for their rehabilitation with the fund from the Annual Development Plan. It was also learned that the prime minister's office instructed to continue regular ration to the Bengali settlers" (abridged). It is

³³ PCJSS Report on the implementation of the CHT Accord, 2009

a racist decision. Government has been feeding a people who caused eviction to thousands of *adivashis* from lands where they lived for centuries in one hand and on the other hand government would stop food for those *adivashi* people who lost their lands and homesteads to the former. In the face of continuous protests, rallies and demonstrations the government at last yielded to the demand of the *Jumma* refugees to continue giving ration and that was also for three months. Later, they were told that the ration provided was meant for six months. It was a cruel game on the part of the government.

THE ACCORD: 8. *Allotment of land for rubber and other purposes: Settlement of lands of those non-tribal and non-locals who were allotted with lands for rubber and other purposes but did not undertake any project during the last ten years or failed to utilize the land properly shall be cancelled.*

Current status: The Deputy Commissioners of three Hill Districts, in violation of the provision, allocated more lands to non-tribal and non-local persons during the years following the Accord. Around 50,000 acres of lands under 2,000 plots were given in lease to the non-locals, particularly in Bandarban district. These lands happened to be the *Jum* land where Mro, Khumi, Khyang, Tripura and Marma communities grow crops for their livelihood. The Parliamentary Standing Committee on the CHT Affairs Ministry in its meeting at Khagrachari and Rangamati on 20 July 2009 and 18 August 2009 respectively decided to cancel those plots which remained unutilized for more than ten years. DC of Bandarban district claimed that about 593 plantation plots so far have been cancelled. But to the utter frustration of the CHT people, the DC of Bandarban has recently reinstated some plots to the owners keeping the CHT Ministry in dark. More plots are in the process of being reinstated.

THE ACCORD: 9. *The government shall allocate additional funds on a priority basis for the implementation of an increased number of projects towards developments in the CHT. The government shall implement new projects on a priority basis for the construction of required infrastructure for the development of the region and shall allocate necessary funds to this end. Keeping in view the environment of this region, the government shall encourage the development of tourism facilities for the tourists from within the country and abroad.*

Current status: But the funds allocated by the government on various projects in the CHT is too inadequate to make any tangible impact on the *Jumma* people and the permanent Bengali residents as these programs were more centrally guided than they were participatory. On the other hand, tourism has yet to be transferred to the HDC. The government is yet to come up with an effective discussion and consultation with the HDC and the RC on the management of tourism in the CHT.

According to ADP documents, allocation for CHT decreased in 2008-09. Taka 119 crore was allocated for CHT in 2006-07 followed by taka 105 crore in 2007-08. However, only 90 crore was allocated in 2009-10 fiscal year, though the original ADP allocations in Bangladesh have increased consistently during 2003-10.

THE ACCORD: 10. *Quota reservation and stipend grants: The government shall maintain the quota system for the tribal with respect to government service and in institutions for higher studies until their attainment of parity with other regions of the country. To the aforementioned end, the government shall grant an increased number of stipends to the tribal male and female students in educational institutions. The government shall provide necessary scholarships for higher education and research in foreign countries.*

Current status: The provision on quota reservation and stipend grants is not being implemented properly. With regard to the admission quota for indigenous students, there is no coherent policy and the entire issue is often embroiled with bureaucratic interventions. In some cases, it is totally dependent on the discretion of the authority of the concerned educational institutions. Furthermore, in several cases, the indigenous quotas are occasionally filled up by Bengali students on the pretext of not having qualified indigenous students.

The government has a 5% quota reservation in Bangladesh Civil Service (BCS) for indigenous peoples. But this has never been practiced in reality. A total of 29,667 persons have got BCS jobs through 20 BCS examinations since 1972. Following the principle of the 5% quota, 1483 indigenous persons should have been in the BCS cadre service.³⁴ In reality, the actual number of indigenous incumbents in government cadre jobs remains a minor fraction of this number.

³⁴ Situation of Indigenous Women and ILO Convention on Discrimination by Dr. Sadeka Halim, Professor of Dhaka University, Sanghati 2007.

The number of stipends has not also been increased and scholarships for higher education and research in foreign countries have not been provided. On the contrary, the government has reduced the tribal quotas in Dhaka, Feni, Chittagong and Kaptai Technical Institutes to 4% from 5%.³⁵

Comilla University posted the result of the first year admission test of the academic session 2009-2010 at its website (<http://www.cou.ac.bd>). The website shows that some non-tribal students get admitted under tribal quota. According to the merit list of science unit, Limon Kanti Dey (Roll no. 30724) got chance to admit under tribal quota. Similarly, according to the merit list of business unit, Mohammad Abdullah Al (Roll no. 42050) and Md Minhajul Abedin (Roll no. 45286) get admitted under tribal quota. However, actual tribal were kept in the waiting list of this business unit.

In September 2002, a Committee on Education formed by the CHTRC met the then Education Minister, then Deputy Minister of the CHT Affairs, authorities of the different universities and higher educational institutions and finally submitted a memorandum to them to increase the number of quotas for the Jumma students and proper management of quota system under civilian authorities. But no step has been taken as per this memorandum.

THE ACCORD: 11. *The government and the elected representatives shall strive to uphold the characteristics of tribal creed and culture. The government shall patronize and help the cultural activities of the tribes towards their development.*

Current status: The government, so far, has not come up with any such policy and program to protect the CHT *adivashi* custom, tradition and distinctive cultural identity. There are three Small Ethnic Groups Cultural Institutes in the three hill districts. But their role remains confined to entertaining the VIPs with colorful presentation of tribal dances and a few publications. Absence of state patronage to promote the indigenous culture and tradition is discernible in the systematic decay of these ethnic *Jumma* heritages.

The present grand alliance government enacted Small Ethnic Groups Cultural Institutes Act 2010 without consultation with indigenous peoples in the country and CHTRC and HDCs in CHT. The Act terms indigenous peoples of the country as "Khudra Nrigoshthi" or "Small Ethnic Groups" which is rejected by indigenous peoples. On the other hand, only 27 indigenous ethnic groups were listed in this Act while almost 25 ethnic groups were excluded from the list.

THE ACCORD: 12. *The Jana Samhiti Samiti shall, within forty-five days of the signing of this agreement, submit lists of all of its members including the armed ones to the government along with details about the particulars of arms and ammunitions in its possession and within its control.*

Current status: This provision has been executed on time.

THE ACCORD: 13. *The government and the Jana Samhiti Samiti shall, within 45 (forty-five) days of the signing of this agreement, jointly determine the date, time, and place for the deposit of arms. After the determination of the date and place for the deposit of arms and ammunitions of the listed members of Jana Samhiti Samiti, all sorts of security measures shall be provided for the return of the members of Jana Samhiti Samiti and their family members to normal life.*

Current status: This provision has been executed.

THE ACCORD: 14. *The government shall declare amnesty for those members who will deposit arms and ammunitions on the scheduled date. The government shall withdraw all cases lodged against them.*

Current status: The government declared amnesty for all PCJSS members who returned to normal life. In 1998 the PCJSS submitted to the government a list of 844 cases filed against 2524 of its members and permanent residents of CHT for withdrawal. But even after 13 years since the signing of this Accord the government is yet to withdraw these cases. Moreover, no cases of the PCJSS members in the Martial Law Court were reviewed to withdraw so far.³⁶

THE ACCORD: 15. *In the event of any person's failing to deposit arms within the specified time limit, the government shall take legal action against such a person.*

Current status: The PCJSS deposited all arms and ammunitions within the specified time limit.

³⁵ PCJSS Report on the Implementation of the CHT Accord, 2009

³⁶ PCJSS Report on the Implementation of the CHT Accord, 2009

THE ACCORD: 16. *A general amnesty shall be given to all members of the Jana Sanghatii Samity after their return to normal life and a general amnesty shall also be given to all the permanent inhabitants connected with the activities of the Jana Sanghati Samity.*

Current status: This provision has been implemented.

THE ACCORD: a) *In order to rehabilitate the returnee JSS members, Tk. 50,000 per family shall be given at a time.*

Current status: The returning members received Tk. 50,000. Those who were in jails were also granted Tk. 50,000 each.

THE ACCORD: b) *After the deposit of arms and return to normal life of all JSS members, including the armed ones against whom cases were filed, warrants of arrest were issued, 'hulias' were published, or sentence was given after trial in absentia, all cases shall be withdrawn, warrants of arrest and 'hulias' shall be called back, and sentences given in absentia shall be condoned as early as possible. If any JSS member is in jail, he too shall be set free.*

Current status: Of the 844 cases placed before the government for withdrawal or dismissal, 720 cases were decided to be withdrawn by the Case Withdrawal Committee at district level. However, the decisions are yet to be implemented. But cases under the military court have not yet been taken up for withdrawal or dismissal by the government.³⁷

THE ACCORD: c) *Similarly, after the deposit of arms and return to normal life, no case shall be filed against, or punishment be given to, or arrest be made of any person merely on account of his/her being a member of the Jana Samhati Samity.*

Current status: Cases were filed, and warrant arrests were issued against some PCJSS members. A few of many such examples are: one Sadhan Tanchangya from Rajasthali under Rangamati Hill District was taken into custody. Mong Sa Thwai Marma was beaten to death by the security forces of Guimara camp under Ramgarh upazila of Khagrachari Hill District, Alia Chakma was beaten to serious injuries by some army personnel of the same camp. Fresh warrants were issued against Kalayan Chakma and Anubhuti Chakma whose cases were in the withdrawal process.³⁸

THE ACCORD: d) *The loans which were taken out by the JSS members from the government banks and establishments, could not be utilized properly due to state of belligerency, shall be condoned along with interest.*

Current status: No measures have so far been taken to write off the loans amounting to Tk.22, 783 of 4 PCJSS members.³⁹ The government says that the matter is under process in the Ministry of Finance. But the process as claimed by the government seems to be a never ending process.

THE ACCORD: e) *Those returnee members of JSS who were previously in the service of the government or government organizations shall be reinstated to their respective posts, and the members of the JSS and members of their families shall be employed in accordance with their qualifications. In this respect, government policy regarding the relaxation of age limits for them shall be followed.*

Current status: 78 JSS members submitted their application for reinstatement. Of them 64 were reinstated to their posts. But no measures were taken for consideration of their services during the insurgency period as 'effective service' period including time scale, seniority, regularization of pay scale and related allowances and retirement benefits etc. The rest PCJSS members were not reinstated in their previous jobs. 671 JSS members were absorbed as police constables and 10 PCJSS members as traffic sergeants. But alleged harassment, abuse and discriminatory treatment on racial and ethnic grounds by some high ranking Bengali police officials led many of these constables to quit the service after some time. Despite repeated request made by the RC to transfer them to the CHT were not paid heed to by the government except in the case of exceptional few.⁴⁰

³⁷ PCJSS Reports on the Implementation of the CHT Accord, 2009

³⁸ PCJSS Reports on the Implementation of the CHT Accord, 2009

³⁹ The borrowers are: Sunil Talukder son of Sudhir Talukder, Ratna Bikash Chakma son of Purna Chandra Chakma, Jyotirmoy Chakma son of Singa Moni chakma, Hridoy Ranjan Chakma son of Tukko Chandra Chakma.

⁴⁰ PCJSS Report on the implementation of the CHT Accord, 2005, 2009

THE ACCORD: *f) Priority shall be given to the JSS members in paying back loans on simple terms with a view to helping their self-employment activities such as cottage industries, horticulture, etc.*

Current status: In the month of June-July, 1998 the PCJSS members submitted 1429 self employment schemes to the government. But the government is yet to decide on the conclusive action (either to approve or to reject the proposal) to be taken on the fate of these projects even in 13 years' time.

THE ACCORD: *g) Education facilities shall be provided to the children of the JSS members and their certificate obtained from foreign academic institutions shall be treated as valid.*

Current status: With one exception, all certificates were treated valid.

THE ACCORD: *17. a) After the signing and execution of the Accord between the government and the JSS and immediately after the return of the JSS to normal life, all temporary camps of the army, the ansars and the village defense party (VDP), excepting the Border Security Force (BDR) and permanent army establishments (consisting of those three at the three district headquarters and those at Alikadam, Ruma, and Dighinala), shall be taken back in phases from the Chittagong Hill Tracts to permanent cantonments and a time limit shall be fixed for this purpose. In cases of the deterioration of law and order in the region, in times of normal calamities, and for similar other purposes, the armed forces may be deployed under the authority of the civil administration in adherence to law and rules as are applicable to all the other parts of the country. In this respect, the Regional Council may, in order to get the required or timely help, make requests to the appropriate authority.*

Current status: No time limit has been fixed for completion of the withdrawal of camps. It is tantamount to delaying the process of withdrawal. PCJSS claims that 31 army camps out of 543 have so far been taken back [vide letter no. CHTAM (sama-1)103/98/86 dated 15.4.99 and CHTAM (SAMA-)106/98/130 dated 10.6.99]. But the government claims that more than two hundred camps have been dismantled. Following the formation of a new government by the grand alliance a total of 35 camps including a brigade were withdrawn. But it is alleged that APBN have been re-deployed at least 5 camps out of 35 camps withdrawn.

An order issued in 1973 for clamping military administration in the CHT has in effect never been rescinded.⁴¹ It was replaced with "Operation Uttoran (Operation Upliftment) on 1 September 2001 in the post-Accord period. As a result, the army continues to involve itself in the civil administration hindering normalcy from returning.

What is uncontested is the omnipresence of the military forces and their grip on the overall administration of the region, even after 13 years of the Accord. The opinions of the armed forces usually tend to prevail on most of the key decisions and in some cases they have taken over some of the positions which they relinquished following the Accord (e.g. assumption of the position of Chairman at CHTDB, after the declaration of emergency).⁴²

THE ACCORD: *b) The abandoned lands of military and paramilitary forces and cantonments shall be transferred to their original owners or to the Hill District Councils.*

Current status: This provision has not been implemented fully. Many villagers whose lands were used for setting up camps alleged that some members of the security forces instructed them not raise any structure in the places vacated by them. Moreover, the abandoned lands of military and paramilitary forces were to be handed over, it was so stipulated in the Accord, either to the owner or to the HDC. However, in actuality these lands were transferred to the Upazila Nirbahi Officer (Executive Officer of a sub-district) violating the provision of the agreement.⁴³

THE ACCORD: *18. Permanent residents of the CHT, subject to priority being given to tribal, shall be appointed to all posts of officers and employees at all levels of government, semi-government, council offices, and autonomous bodies in the CHT. In case qualified candidates among the permanent residents of CHT are not available for a particular post, appointment in that post may be made on deputation from the government for a term of a certain period.*

Current status: No steps have so far been taken by the government for inclusion of the said provision in the concerned appointment or service rules and regulations of the ministries to be put into practice in the CHT region.

⁴¹ Eleanor Ditaan Bang-oo: In Search for Peace in the Chittagong Hill Tracts of Bangladesh in Chandra K. Roy, Victoria Toulis Corpuz, Amanda Romero-Medina ed. 'Beyond the Silencing of the Guns', Teb Tebba, Baguio City, Philippines.

⁴² The Indigenous World 2004, IWGIA, p-292

⁴³ FGD findings

THE ACCORD: 19. A Ministry of the Chittagong Hill Tracts Affairs shall be established by appointing a minister from among the tribal groups. An Advisory Council shall be formed to assist this ministry with the persons stated below:

a) Minister on Chittagong Hill Tracts affairs; b) Chairman/representative, Regional Council; c) Chairman/representative, Rangamati Hill District Council; d) Chairman/representative, Khagrachari Hill District Council; e) Chairman/representative, Bandarban Hill District Council; f) Member of Parliament, Rangamati; g) Member of Parliament, Kagrachari; h) Member of Parliament, Bandarban; i) Chakma Raja; j) Bohmong Raja; k) Mong Raja; l) Three members from the non-tribal residents of hilly areas nominated by the government from three hill districts.

Current status: CHT affairs Ministry came into existence with a minister from the tribal. But when BNP was voted to power to form the government, the CHT Ministry was run without a full-fledged minister. A tribal member of parliament (MP) was appointed as deputy minister to the ministry, while the post of the cabinet minister was retained by the Prime Minister. During the Caretaker Government led by Dr. Fakhruddin Ahmed a non-indigenous Adviser was appointed to look into the CHT Ministry. Later, in 2007 Chakma Cricle Chief Raja Devasis Roy was inducted to take care of the CHT Ministry as Assistant Adviser to the Chief Adviser with the rank and status of state minister. After 2008 election, having won absolute majority in the parliament, the Awami League formed the government. Dipankar Talukder, MP from the Ramgamati constituency was given the charge of the MoCHTA with the rank and status of a State Minister. However, the Accord envisages a full minister for the said ministry.

But the CHT Ministry is unable to exercise its powers and carry out its responsibilities as per the rules of business. The critical point to be given serious thought in respect of the Ministry is that 99% of its staffs are non-indigenous who do not hail from the CHT. As is natural, they have no idea about the CHT people and the administration of the region. As a result, they are often found to take stands which go against the interest of the hill people.

The MoCHTA has an Advisory Council which met only twice during the incumbency of the caretaker government with no result on record. With the formation of the new government on 6 January, 2009, the Advisory Committee had a sitting a few months back. The results are not known as yet.