**Contributions of Civil Society Organizations and Networks of Indigenous Peoples of Bangladesh to The Expert Mechanism on the Rights of Indigenous Peoples for Inclusion in Their Study on Treaties, Agreements and Other Constructive Arrangements, between Indigenous Peoples and States, including Peace Accords and Reconciliation Initiatives, and their Constitutional Recognition to Be Submitted to the Human Rights Council in September, 2022**

1. The Chittagong Hill Tracts (CHT) region in southeastern Bangladesh constitutes a case that involves a ‘treaty’, an ‘agreement’ and several ‘other constructive arrangements’ as understood in the context of the study on Treaties, Agreements and Other Constructive Arrangements by Special Rapporteur Miguel Alfonso Martínez in 1998-99.[[1]](#footnote-1)

2. The CHT and its surrounding territories were composed of independent chiefdoms and chieftaincies until 1787, when the Chakma King Jan Bux Khan entered into a treaty with Lord Cornwallis, the Governor General of the British East India Company’ colonial territories in India. [[2]](#footnote-2) Through the treaty, the Chakma nation accepted British suzerainty and became tributaries, but retained its autonomy. Other indigenous nations of the region followed suit.

3. In 1860, the greater part of the CHT was annexed to the aforesaid Company’s territories, and by 1900 the former came to be indirectly ruled by the British Indian government.

4. After partition of India and the birth of Pakistan and India in 1947 and the independence of Bangladesh in 1971, the CHT came to gradually lose its autonomy and self-rule.

5. Between 1975 to 1997, growing militarization followed by a guerrilla war between indigenous fighters and government security forces led to gross human rights violations, including unlawful killings, rape, arson, kidnapping, torture, unlawful detention and land-grabbing and the suppression of basic civil and political rights and freedoms.[[3]](#footnote-3)

6. The growing suppression of human rights by military and other security forces was combined with population transfer, whereby 250,000-450,000 Muslim Bengali people were resettled in the CHT in 1979-1985. The settlers were themselves victims of human rights violation, nevertheless, many of them were induced or coerced into illegally occupying titled and customary lands of indigenous peoples and to otherwise engage in violence against them.[[4]](#footnote-4)

7. On 2 December, 1997, an agreement was signed between the Government of Bangladesh (GOB) and the Parbatto Chattogram Jana Samhati Samiti (JSS). Although generally treated as an ‘accord’, the agreement has several features of a ‘treaty’. [[5]](#footnote-5)

8. However, the reneger by the GOB of the aforesaid accord had started to be demonstrated within the first five years of its signature, and judged today, nearly two and a half decades later, apart from some institutional and legal action, little of substance has been achieved.

9. In a paper submitted to the *Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples,* organized by the Office of the High Commissioner for Human Rights in Geneva, on 15-17 December 2003, by a traditional leader from the CHT, later a member of the UN Permanent Forum on Indigenous Issues (Pfii), the fact of non-implementation of the accord was brought to the notice of the United Nations.[[6]](#footnote-6)

10. In 2011, a member of the UN Permanent Forum on Indigenous Issues (PFii) presented a report on the CHT Accord,[[7]](#footnote-7) stating that its provisions remained “unimplemented or only partially implemented, including some critical clauses such as the settlement of land disputes, demilitarization and the devolution of authority to local institutions”.[[8]](#footnote-8)

11. The aforesaid report went into details and described the non-implementation or inadequate implementation of the accord in the following, among other, areas: (a) non-implementation of the region’s Tribal Area status; (b) absence of framing of subsidiary rules and regulations to supplement laws passed in 1998, 2001 and 2003 to implement the accord; (c) the ineffectiveness of the Accord Implementation Committee*;*  (d)(i) the non-transfer of crucial subjects and areas to the Hill District Councils; (d)(ii) the absence of elections to the three councils; (e)(i) the prevention of the CHT Regional Council to play its due role as envisaged in the accord; (e)(ii) the absence of elections to the council; (e)(iii) the declaration of the council’s organic law – Act XII of 1998 – as unconstitutional by the High Court Division of the Supreme Court; (f)(i) hindrances to the proper functioning of the Land Commission, including the absence of legislation to render it compatible with the provisions of the 1997 Accord; (f)(ii) the non-cancellation of land illegally granted for rubber and other commercial plantations to non-tribal and non-local people; (f)(iii) the absence of measures to restitute indigenous peoples’ lands; (f)(iv) and to facilitate the voluntary relocation of Bengali settlers to areas outside the CHT; (g) demilitarization of the region, including the dismantling of all non-permanent military and other security forces’ camps in the CHT, except those designated to be exempt from this; (h) the absence of measures to rehabilitate 9,700 returnee international refugee families and all of the internally displaced persons; and (i) the inadequate authority bestowed upon the Ministry of CHT Affairs and the anti-tribal orientation of some of the ministry’s recent activities.[[9]](#footnote-9) Put in brief tabular form, the overview is as follows:

**Status of CHT Accord of 1997 in 2011**

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| **Sl.** | **Subject Matter** |
| a | Non-Implementation of CHT’s Tribal Area Status |
| b | No Subsidiary Rules and Regulations to Supplement Post-Accord Laws |
| c | Ineffectiveness of CHT Accord Implementation Committee |
| d(i) | Non-Transfer of Adequate Authority to Hill District Councils |
| d(ii) | No Elections to the Hill District Councils |
| e(i) | Prevention of CHT Regional Council to Play its Due Role |
| (e)(ii) | No Elections to the CHT Regional Council |
| (e)(iii) | Declaration of Regional Council Act 1998 as Unconstitutional by Supreme Court |
| f(i) | Hindrances to Land Commission, including Absence of Reforms to Law |
| f(ii) | Non-Cancellation of Commercial Land Leases of Non-Tribals & Non-Locals |
| f(iii) | Non-Restitution of Indigenous Peoples’ Lands |
| f(iv) | Non-Facilitation of Voluntary Relocation of Bengali Settlers Outside CHT |
| g | Continued Militarization & Continuation of Non-Permanent Military & Other Camps  |
| h | Non-Rehabilitation of 9,700 Refugee Families & Any Internally Displaced Persons |
| i | Inadequate Authority of Ministry of CHT Affairs and Its Anti-Tribal Orientation  |

Source:

 Lars Anders Baer*, Study on the Status of Implementation of the CHT Accord of 1997*,

18 February 2011 (E/C.19/2011/6), paras 24-44 (pp. 8-14).

12. The aforesaid report submitted to the Pfii analyzed the causes behind non-implementation with the following words: “The reason for non-implementation of the Accord reaches beyond the political party now running the Government. The region remains heavily militarized and there have been continued and consistent allegations that the army is interfering in civilian affairs in the region”. [[10]](#footnote-10) The networks and organizations submitting this report hold that the current situation has in fact deteriorated further between 2011 to January, 2022 (the time of submission of this report).

13. Highlighting the lessons that the CHT Accord provides, the aforesaid report mentioned that “[the] case of the Chittagong Hill Tracts is also important since it illustrates the challenges in implementing a peace treaty, and how delayed implementation can result in continued widespread human rights violations, violent conflicts and military control.”[[11]](#footnote-11) The authors of this report assert that in January 2022 (time of submission of this report), the situation is worse now than 2011, with increases in the number of military camps and checkposts and their undue interference in civilian affairs, along with the waging of “proxy wars” through disgruntled indigenous elements coerced or induced to work against their fellow indigenous sisters and brothers.

14. A year after the submission of the aforesaid report, some of the causes behind non-implementation in it were analyzed to some depth in a paper submitted to a UN expert seminar.[[12]](#footnote-12) One such issue was the absence of third parties to implement it and the absence of entrenchment in intra-state treaties and constitutional provisions as done in the case of South Tyrole and Mizoram, India, respectively.[[13]](#footnote-13) It is argued that in cases where there is sharp asymmetry in intra-state agreements between state and non-state parties, third party mediation helps “prevent imposition of solutions by one party on the other…”.[[14]](#footnote-14) The need for third party mediation is acutely felt now, in January 2022, as the JSS-GOB Accord Implementation Committee now is neither independent of nor in possession of powers and authority to compel implementation on the part of the GOB.

15. In a report published by Amnesty International in 2013 the reputed human rights organization concluded that the Sheikh Hasina-led Awami League government had … “only partially met the commitments it made in the Accord. Even in the areas where it has taken some small steps, the outcome has not made a significant difference to the fulfillment of the rights of the Pahari (indigenous peoples; bracket added).[[15]](#footnote-15) The same report mentions that there are “… frequent reports of human rights violations, including harassment of members of Pahari political parties and human rights defenders by the army”.[[16]](#footnote-16) Violations of this nature have reached new heights between 2018 to 2022, whereby leaders of indigenous political parties have had to go “underground” on account of fictitious criminal charges framed against them. On the other hand, human rights defenders, such as those protesting against an army-affiliated tourism resort in the traditional lands of the indigenous Mro people of Bandarban district, are often threatened and intimidated by armed soldiers and security intelligence personnel alike.

16. Given the ineffectiveness of the accord-recognized supervisory mechanisms, as mentioned in paragraph 14 above, the abovementioned indigenous organizations and networks consider the following, among other, possible remedies for non-implementation.

17. In regards to litigation in the Supreme Court of Bangladesh, such as in the case of *Mohammad Badiuzzaman* *& Another v Bangladesh & Others, 15 BLC (23010), 531,* an already pronounced judgment in the High Court Division (of the Supreme Court) has ruled that the subject of the accord is not a justiciable issue under Bangladeshi law. Moreover, over the last five years, harassment and intimidation of the higher judiciary has severely affected their independence, leading to fewer and fewer judgments that are critical of the government. As in the case of rape and sexual assault allegedly by soldiers against indigenous women and girls in the CHT, the organizations and networks involved herein do not expect positive results in such litigation.

18. More focused complaints to the treaty monitoring bodies of treaties applicable to Bangladesh, supplemented with sustained lobby and advocacy at national and international levels may yield some positive result. In addition, sanctions as regards Bangladesh’s contribution to UN Peacekeeping may be one of the few “sticks” with which to compel implementation, as avenues of “carrots” to induce implementation seem to be quite elusive.

**Recommendations**

19. It is recommended that the Government of Bangladesh: (a) declare a timeline for implementation of all provisions of the 1997 CHT Accord; (b) facilitate the expedient settlement of land disputes by the Land Commission; (c) implement a phased withdrawal of temporary military camps in the region in accordance with the Accord; (d) transfer civilian functions to the civilian authorities that are currently being performed by the military contrary to the Accord; (f) put a stop to and address the issue of impunity for human rights violations in the region, punish the perpetrators, and provide reparations to the victims concerned; (g) arrange for third-party mediator to facilitate and monitor the full implementation of the CHT Accord; (h) put a stop to the assault on the progressive forces and regulations such as the CHT 1900 Regulation, which is considered as an amulet to protect the customary rights of Indigenous Peoples; (i) end militarism in the CHT immediately by withdrawing temporary military camps and checkpoints throughout the hill districts as per the condition of the accord (j) withdraw cases against human rights activists who were advocating for the implementation of the Accord and the general rights of Indigenous Peoples.

20. It is further recommended that the United Nations and major trading and development partners of Bangladesh (largely governments) put sanctions on Bangladesh’s participation in UN peacekeeping and on trade and development aid until the Accord is fully implemented.

1. Miguel Alfonso Martínez (*Special Rapporteur*)*, Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations*, E/CN.4/Sub.2/1999/20, 22 June 1999. [↑](#footnote-ref-1)
2. Chandra Roy Henriksen, *Land rights of the indigenous peoples of the Chittagong Hill Tracts, Bangladesh*. Copenhagen: International Work Group for Indigenous Affairs. 2000. [↑](#footnote-ref-2)
3. CHT Commission, *Life is not ours: Land and human rights in the Chittagong Hill Tracts, Bangladesh*. Denmark and Amsterdam: IWGIA and Organizing Committee, Chittagong Hill Tracts. 1991. [↑](#footnote-ref-3)
4. CHT Commission, op. cit., 1991. [↑](#footnote-ref-4)
5. Raja Devasish Roy, ‘The Discordant Accord: Challenges in the implementation of the Chittagong Hill Tracts Accord of 1997‘, in Miek Boltjes (ed.), *Implementing Negotiated Agreements: The Real Challenge to Intra-State Peace*, Cambridge T-M-C Asser Press ([www.asserpress.nl](http://www.asserpress.nl)), Cambridge University Press (UK and USA; [www.cambridge.org](http://www.cambridge.org)), 2007, pp. 115-146 at p. 119. [↑](#footnote-ref-5)
6. Raja Devasish Roy,**‘**The International Character of Treaties with Indigenous Peoples and Implementation Challenges for Intra-State Peace and Autonomy Agreements between Indigenous Peoples and States: The Case of the Chittagong Hill Tracts, Bangladesh**’*,*** paper presented at the*Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples* organized by the Office of the High Commissioner for Human Rights at Palais des Nations, Geneva, Switzerland, on 15-17 December 2003***(***HR/GENEVA/TSIP/SEM/2003/BP.8). [↑](#footnote-ref-6)
7. Lars Anders Baer, ‘Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997’, 18 February 2011 (E/C.19/2011/6), submitted at the Tenth Session of the Pfii (16-27 May 2011). [↑](#footnote-ref-7)
8. Baer, op. cit., para 2, p.3. [↑](#footnote-ref-8)
9. Baer, op. cit., paras 24-44 (pp. 8-14). [↑](#footnote-ref-9)
10. Baer, op. cit., para 46 (p. 15). [↑](#footnote-ref-10)
11. Baer, op. cit., para 3 (p. 3). [↑](#footnote-ref-11)
12. Raja Devasish Roy, ‘Promoting Partnerships in Implementing Intra-State Autonomy Agreements: Lessons from the Chittagong Hill Tracts, Bangladesh’, paper presented at the Expert Seminar on “Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements”, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), at Palais des Nations, Geneva, Switzerland, on 16- 17 July 2012 (HR/GENEVA/ /SEM/EXPERT/2012/BP.1), p. 5. [↑](#footnote-ref-12)
13. Roy, 2012, op. cit., p. 4. See also, Roy, 2007. See also, Boltjes, 2007, pp. 13. [↑](#footnote-ref-13)
14. Boltjes, 2007, pp. 21. [↑](#footnote-ref-14)
15. Amnesty International, *Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts*, London, 2013, p.6. [↑](#footnote-ref-15)
16. Amnesty, 2013, op. cit., p. 7. [↑](#footnote-ref-16)