

The Discordant Accord: **Challenges towards the Implementation of the Chittagong Hill Tracts Accord of 1997¹**

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I. Introduction: **Peace-building sans Autonomy**

Waging peace

The signing of the Chittagong Hill Tracts Accord on 2 December 1997 heralded the consolidation of a much-publicized truce between the Government of Bangladesh and the indigenous people's political party known as the *Parbatya Chattagram Jana Samhati Samiti* ("Chittagong Hill Tracts People's Solidarity Organization") or "PCJSS" ("JSS" in short). The JSS had until then sustained a protracted low intensity guerrilla war - through its armed wing, the "People's Liberation Army", better known as the *Shanti Bahini* or "Peace Force" - against successive regimes in Bangladesh for almost twenty-five years. Decommissioning on the side of the guerrillas, without accounting for some minor armed deployments, had actually taken effect more than five years ago, on 10 August, 1992 to be precise, when the JSS had declared a unilateral cease-fire. However, the formalization of this informal ceasefire had to wait until after the signing of the accord in 1997, which also included a general amnesty for the erstwhile guerrilla fighters.

The two main purposes of this accord, as with many other similar political arrangements, was to re-establish peace in the Hill Tracts and to provide a measure of autonomy to this southeastern border region that is topographically, demographically and culturally so different from the rest of Bangladesh.³ The contrast between the Chittagong Hill Tracts (CHT) and the rest of the country, barring some minor pockets inhabited by indigenous peoples, could hardly be more striking. The CHT is hilly and mountainous while the rest of the country is largely composed of deltaic plains. The dominant language in the rest of the country is Bengali while in the CHT the indigenous groups have their own languages. Some of these are related to Bengali and other *Indo-Aryan* languages, whilst others are totally different and belong to languages from the *Tibeto-Burman* group. Most of the indigenous people are Buddhist, Hindu or Christian, sometimes in conjunction with their traditional indigenous faiths, while in the plains, the religion of the majority is Islam. Most of plains Bangladesh had formed part of empires, kingdoms or other highly formalized state and quasi-state polities for many centuries, while the CHT was composed of decentralized and partly-formalized self-governing chiefdoms and chieftaincies that were independent of external political control until *after* Bengal itself was colonized by the British between the 18th and 19th centuries (Bangladesh Groep Nederland, 1984:23, Brauns and Loffler, 1990:27, Chakroborty, 1977, Hutchinson, 1978: 8,9; Ishaq, 1975: 35; Serajuddin, 1968).

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- Chakma Chief/Raja

A peace threatened

Five years on, many questions are being raised as to whether the 1997 Accord was a failure.⁴ The resultant situation of “peace”, or rather, the absence or near-absence of organized conflict between the two main erstwhile protagonists, the indigenous guerrillas and the government security forces, still holds. The past half decade since the Accord has in fact shown little or no violence against the security forces or Bengali (“Bangali”) settlers by the indigenous people (known generally as “pahari” or “hillpeople”) ⁵, although the reverse is somewhat less true (IWGIA, 2002: 318).⁶ On the other hand, the post-accord situation has seen the rise of a new conflict that threatens peace, a conflict between erstwhile allies from among the indigenous autonomist activists. Many young hill men have met violent deaths in confrontations between these two opposing groups, known locally as the “pro-Accordists” and the “anti-Accordists”. The pro-Accordists are led by the JSS. The anti-Accordists - consisting largely of members of the *United People’s Democratic Front* or “UPDF”, that was formed out of a faction of the *Hill Students’ Association* – had rejected the pre-1997 negotiation process as a “sham”. The commissions and omissions of the police and other government security forces regarding this conflict have led locals to believe that although these forces are ostensibly neutral, they are not really interested in applying the law when the victims of the violence are indigenous people, whoever the perpetrators of the violence might be. Perhaps this is at least partly due to the unwritten government policy to not interfere in such intra-indigenous fratricidal conflicts. The other reason may be the ethnicity of the security personnel: hardly any of them belong to the indigenous groups. Most indigenous people believe that bias and discriminatory attitudes on the part of the government helps perpetuate this conflict. Whether or not this perception is based on fact or opinion is secondary to the need for the government and its security forces to be seen as neutral conflicts that have inter-ethnic dimensions. There is much room for improvement here.

Comparing peace

Post accord situations involving intra-state agreements inevitably throw up allegations of non-implementation by one or other of the concerned parties. Among the notable exceptions is the Mizoram peace process that was finalized through the Mizoram Accord of 1986 (Nunthera, 2002). In the first few years after the Accord, there was some dissatisfaction in the delay in opening a university campus in the state capital of Aizawl and with regard to the High Court, but these matters were soon resolved amicably. In fact, the Mizoram process stands out among comparable peace processes other arrangements due to the presence of two features. One of these is the presence of a very strong entrenchment clause that safeguards arbitrary changes to the land and customary law rights of the Mizo people, as the same are now part of the national constitution, and doubly protected by the mandatory requirement of consent of the Mizoram legislature prior to any amendments to it (apart from the cumbersome and difficult legislative regarding amendments to the constitution). The other is the relatively low level of in-migration into the state.

Many say that the Mizos’ sense of cultural integrity is far less threatened than, e.g., in the case of the indigenous peoples of the CHT, or those in nearby Tripura State within India, where the immigrant population is larger than or almost equal to the indigenous population. This is reflected in so many aspects of the cultural activities in these three regions; the self-assured and seemingly effortless expressions of art, music and literature in Mizoram contrasting sharply with the *accented* expressions of creativity oriented around an idealized indigenous *national ethos* in the CHT and in Tripura.

Whither Implementation

Whether or not an intra-state peace process such as in the CHT has failed or succeeded can only be judged by the presence or absence of substance in the real or perceived commissions and/or omissions of one or either of the parties to the Accord in carrying out their respective responsibilities under the agreement. On the side of the government and the Bengali settlers, there have sometimes been some murmurs of suspicions that the JSS had not given up all its arms to the government. These suspicions have not however been voiced very forcefully, suggesting, I feel, that there is little or no truth in this allegation. I have heard of no other complaints of non-implementation against the JSS. However, complaints of non-implementation on the part of the government are numerous. J. B. Larma, the president of the JSS and the current chairperson of the CHT Regional Council, has time and again complained of non-implementation of the Accord in no unclear terms.⁷ He is on record recently as having lamented thus:

“[Though] more than five years have passed after the signing of the Accord, most of the provisions, especially the main issues of the Accord, such as, formation of Land Commission for settling the land disputes, rehabilitation of returnee Jumma refugees and internally displaced Jumma families, withdrawal of temporary camps of security forces and military administration, preparing voter list only with the permanent residents of CHT, effective enforcement of the three [hill district councils] and the CHT Regional Council Act, rehabilitation of the Bengali settlers outside CHT and etc. have either [been] left unimplemented or partially implemented.”⁸

A failed accord?

Like Larma, many others have expressed dissatisfaction with the process of implementation of the Accord (Corpuz, 2000). Many regard the accord as a failure for having failed to bring total peace and for having brought about a devolved system of self-government that seems to have little or no teeth. Others have even questioned the contents and timing of the accord itself, as with other similar accords, and said that it had come “too little, too late, too loud” (Samaddar, 1999:8). Similarly, a well-known writer on the CHT had expressed her foreboding over the success of the Accord even before a year had passed from the date of its signing. She claimed that, “[the] seeds of insecurity, discontent, inequality and further polarization are inherent within the peace accord” (Mohsin, 1998:107). Her sympathies are clearly on the side of those who feel that the 1997 Accord has compromised the interest of the indigenous people, but her analysis does not attempt to reconcile the seemingly opposed needs of providing a larger quantum of autonomy to the CHT - with primacy to the indigenous people - and yet prevent “polarization and discontent”, unless we totally disregard the views of the Bengali-speaking inhabitants of the region (some of whom oppose the CHT Accord provisions on self-government as “too conciliatory” towards the indigenous people). From a particular political perspective, one can, of course, consider any political accord in its totality as a success or failure. Thus, many indigenous people of the CHT do regard the 1997 Accord as a failure, at least with regard to peace and devolution. Then again, some feel that five years is too short a period for such a judgment, especially where a party initially opposed to the Accord while in opposition is now holding the reigns of government. This is the stand of the JSS, who insist that it is not the contents of the Accord but its non-implementation that is responsible for the current political stalemate.

On the other hand, if we look at specific aspects of the accord, in a somewhat reductionist manner, we can easily see both success and failure, as we will discuss later in more detail in chapter IV and chapter V of

this article. Such a reductionist perspective may be useful when we attempt to consider peace processes such as the CHT one within the context of a longer time frame. With such a view, we remind ourselves that the 1997 Accord is the *third* political accord on the CHT in recent times, having been preceded by the 1988 agreement signed by the “moderate” indigenous leaders, excluding the JSS, and the 1985 agreement signed by a faction of the “Priti Group” that broke away from the JSS in the early 1980s. But let us look further. I feel that in order to understand where the peace process is now heading towards, and even where it might ultimately lead to, it is necessary to also look into the process of negotiations and into the political and administrative history of the region. Unless we understand the legacy of the historical process of colonization and the erosion of autonomy in the region, it is unlikely that we will understand what the indigenous people of the CHT – including the JSS and the UPDF - have in mind when they talk about a revival and revitalization of autonomy. Perhaps this enquiry will also help us understand the dynamics of other similar peace processes and “ethnic” political accords in different parts of the world.

II. Historical Background: From Tributary to Colony

Militarization and resistance: The CHT becomes a British tributary

Like many other sub-Himalayan mountain areas on the tri-borders of India, Burma (‘Myanmar’) and Bangladesh, the Chittagong Hill Tracts (CHT) was first colonized, not by a kingdom or empire from the neighbouring plains, but by British imperialists (Bangladesh Groep Nederland, 1984:23, Brauns and Loffler, 1990:27). In the case of the CHT, the British were motivated both by strategic and economic interests, and they achieved their aims through military deployment and diplomatic subterfuge, leading ultimately to an exploitative trade treaty, and ultimately, direct colonization.

By the 1780s, the British East India Company had converted the major chiefdoms and “tribal” confederacies of the region into British tributaries (Chakroborty, 1977, Hutchinson, 1978: 8,9). Earlier, the region had served as a buffer between British Bengal and the *Lushai/Mizo* confederacies to the east. This tributarization did not, however, come about before a decade-long guerrilla war led by the Chakma chief or *raja* was brought to an end through an economic blockade of the land-locked region that cut off the supply of salt, iron, clay and other necessities that were not available in the region (Serajuddin, 1968, Chakroborty, 1977). This was one of the first known guerrilla wars of South Asia against a militarizing colonial power. In 1787, the Chakma Raja Jan Bux Khan signed a truce with the British Governor General, Lord Cornwallis, promising to pay a fixed amount of tribute of hill cotton to the British East India Company (Ishaq, 1975: 35, Serajuddin, 1968, Chakroborty, 1977). Since this treaty of 1787– copies of which have not been located – the political status of the CHT was not to be formally renegotiated again for more than two centuries, until the 1980s.

In any case, the aforesaid treaty was to pave the way for ultimate colonization, as can be seen from historical records of the time. The process of transformation from tributary to colony has been described in the following manner:

“In 1829, Mr. Halhead, the Commissioner stated that the hill tribes were not British subjects but tributaries, and that he recognised no right of the British to interfere

with their internal arrangements. The near neighbourhood of a powerful and stable Government naturally brought the Chiefs by degrees under British influence, and By the end of the 18th century every leading Chief paid to the Chittagong Collector a certain tribute or yearly gift made to purchase the privilege of Free trade between the inhabitants of the hills and the men of the plains. These sums were at first fluctuated in amount but gradually were brought to specified and fixed limits, eventually taking the shape not of tribute, but of revenue paid to the state". (Ishaq, 1975:28)

A war that was similar in some ways to the Anglo-Chakma war of the 1780s was to be repeated almost two centuries later, again led by the Chakma people, but not by its chiefs as before, but by Marxist-oriented leaders, and directed not against an empire, but against the nascent Bangladeshi state that had itself become independent through a bloody civil war. This was in 1973, two years after the independence of Bangladesh, and a year after the adoption of the first constitution of the republic, which had rejected the CHT people's demands for revival of autonomy and constitutional safeguards.⁹ The lone legislator from the CHT who was present in parliament during the debates on the draft constitution – a young and charismatic left-leaning lawyer named M.N. Larma - staged a one-man walkout from the assembly hall in protest against the non-inclusion of CHT-related matters in the constitution.¹⁰ A series of peaceful demonstrations in favour of autonomy and constitutional safeguards in the following months were met with force by police action, and government policy seemed to remain insensitive to CHT issues. Larma gradually became more and more convinced that constitutional means of obtaining autonomy would be futile, and ultimately started an armed struggle for self-determination. Ironically, Larma himself was to meet a tragic death in an intra-party conflict in 1985.

Annexation to Bengal

Despite the British-Chakma treaty of 1787, formal annexation into British Bengal came almost a century later, in 1860, by the East India Company's successor, the British Indian government, which renamed the region as the "*Chittagong*" Hill Tracts, due to its proximity to, and its control by, the plains region known as "Chittagong", which is now an administrative district that is quite separate from the hill districts of the CHT. Until then, the Company was content with its revenue earnings from this territory, then known in revenue records as *Jum Bangoo* or as the *Kapas Mahal* (or Cotton Department). The cotton tributes were gradually converted to cash payment before the end of the 18th century. Between 1860 to 1947, the indigenous polities and alliances were gradually realigned, leading to political centralization among some of its peoples and their chiefs, and to decentralization in others. This ultimately led many chieftaincies and "tribal" confederacies to disappear into political and social oblivion (Hutchinson, 1978:12, Brauns and Loffler, 1990:30, Schendel et al, 2000: 25-32). However, throughout the period of British rule, which ended in 1947, a quantum of administrative autonomy was retained in the reorganized quasi-traditional and partly-formalized self-government system, in which the primacy of the indigenous groups was highlighted, as against non-indigenous settlers.

Scarce resources & rising population

At one time the Hill Tracts was rich in natural resources and had a very low population density. The per capita access to resources was generous indeed. This is no longer true, at least for its known resources. The quest for taxes, trade, timber, fisheries and sheer living space has changed all that, not to mention the flooding of the region's widest and richest valley by the damming – some say damning – of the river

Karnafuli in 1960. The dam – known as Kaptai Dam – displaced nearly 100,000 people, about one-third of the population of the region, and is regarded by many as one of the major causes of the armed revolt that started in the 1970s and ended in the 90s. Between the 1860s to 1979, when the so far largest group of government-sponsored Bengali settlers were brought into the CHT, the region's population had grown more than fifteen-fold. Although its population is still small when compared to some of the world's most densely populated settlements as are to be found in the nearby plains of Bangladesh, it does not seem so small when looked at in relation to the scarce lowlands and infertile uplands of the region. Thus the much flouted “emptiness” of the hills, as the settlers of the 1980s found out to their peril, was a huge myth, when they braved the jungle, malaria, hostile guerrillas and a patronizing national army to make a new home in the region.

Erosion of autonomy & Bengali in-migration

The post-colonial period (1947+) saw further erosion of autonomy in the CHT, despite the introduction of franchise rights in the 1950s. The new Pakistani state, born out of a notion of nationhood for the Muslims of India, had little political space for the non-Muslim population of the region, especially as many of them had sought to merge the CHT with India, rather than Pakistan. It was not that those in favour of India during the partition were firm believers in *Indian nationalism* as such. What they sought to avoid was to become religious minorities and be subjected to discrimination by the new Islam-oriented, if not theocratic, state. However, until the 1950s, most senior government officials who were posted to the CHT were from the then West Pakistan or were Muslim refugees from India, and they remained largely neutral in resource and other conflicts between indigenous people and Bengali settlers. Although mostly Muslim by faith, they did not perhaps feel any closer to the Bengalis than to the indigenous people. Things, however, began to change as more and more Bengali-speaking East Pakistani bureaucrats started to be posted in the CHT, especially from the mid-1950s onwards. Many of these officials nevertheless acted as fairly as they could under the circumstances. Others, however, were less than fair, and occasionally unscrupulous. This resulted in increased immigration of ethnic Bengalis, and their growing domination in service, commerce and other spheres of politics and economy in the hill region. The CHT leaders were unable to prevent the indigenous peoples' political and economic marginalization with the phenomenal rise of the settler population of the region and successive government policies that discriminated for the Bengalis and against the indigenous people, overtly or covertly.¹¹

Bengali in-migration into the CHT had started during the 19th century, but even after the departure of the British in 1947, the settlers made up less than 10 percent of the population. This was to rise to almost 50% in 1991, making the indigenous people a near-minority in their ancestral homeland. The internal immigration policies of the different governments were not, however, the same. While the British government had allowed limited immigration into the CHT (it was also careful to not let anti-British Bengali political groups influence the relatively “non-revolutionary” hill peoples), the Pakistani government's role (1947-1971) on immigration was more ambivalent, while the role of successive Bangladeshi administrations on this issue has varied from covert encouragement (early 1970s) to a directly sponsored population transfer programme (1979 to 1984).

The transmigration of the largely Muslim peasants from various lowland districts led to the displacement of tens of thousands of indigenous people, thereby partly “civilianizing” the ongoing conflict and adding ethnic and religious overtones to a conflict that was hitherto largely restricted to the non-Muslim indigenous

guerrillas and predominantly Muslim Bengali government security forces. Of course, that does not mean that innocent civilians, whether Bengali or indigenous, were not victimized earlier, but at least their number until then, was not so visibly large. This part-civil part-military conflict continued up to the 1990s, and it was not until the signing of the 1997 Accord that the organized internal war formally ended. In the meantime, thousands of lives had been lost, tens of thousands of people rendered homeless, and an untold number had to suffer the indignities of rape, torture and imprisonment. Although there were casualties on both sides of the ethnic divide, the indigenous people suffered the most, because the balance of force was not on their side, among other things (Chittagong Hill Tracts Commission, 1991). Moreover, the security forces had, on the whole, paid little heed towards the human rights of the indigenous people in their quest to contain the insurgency. The indigenous fighters had a cause to fight for. But for most of the government troops, it was just a job, as only a few felt that the Bangladeshi state was seriously threatened by a dedicated, but small outfit that had restricted a low-intensity guerrilla war to the hill region only.

III. The Chittagong Hill Tracts Accord of 1997: Peace, Demilitarization, Self-Government & Rehabilitation

Peace and devolution to CHT Councils

Very briefly, the 1997 Accord contains four main sections or parts. Part A, under the heading “General”, recognizes the CHT as a “tribal inhabited area”, and deals with commitments to the passage of legislation and details of composition of the committee that was to oversee the implementation of the accord (no time frame for implementation was agreed upon). Part B is entitled “Hill District Local Government Councils/Hill District Councils”, and as its title suggests, contains detailed provisions on proposed amendments to the District Council laws to strengthen the councils’ existing powers and to add more subjects under their jurisdiction. Part C, entitled “Chittagong Hill Tracts Regional Council” lays down the composition of a new unit of regional authority to be constituted, styled as a “regional” council incorporating the three hill provinces or “districts”. In the case of both the regional and the district councils, the chairpersonship and two-thirds of the seats were to be reserved for indigenous or “tribal” people.

Rehabilitation, decommissioning and amnesty

Part D, entitled “Rehabilitation, General Amnesty and other matters” actually provides for quite a wide range of issues besides the rehabilitation of the international refugees, the internally displaced people and the indigenous fighters, and the grant of amnesty to the guerrillas and other indigenous people who were involved in the armed struggle. A specially constituted *task force* was to expedite the work of rehabilitation. The vexing and seemingly irresolvable issue of land was mentioned both in the district councils laws (part B) and in this part (part D), including provisions for land grants to “landless” indigenous families, the formation of a *Commission on Land* to provide expeditious justice in land-related disputes (especially between indigenous people and settlers), and for the cancellation of land leases to non-residents where such lessees had illegally left the land utilized. Other important matters included the manner and timing of handing over of arms by the guerrillas and their return to normal life, affirmative action through quotas for reservation of jobs for local residents, with priority to indigenous (“tribal”) candidates, special allocation of development funds, the dismantling of non-permanent military camps and the return of soldiers to peacetime permanent garrisons (without any time frame), and the formation of a separate ministry to deal

with all major aspects of administrative and developmental matters related to the hill region., to be under the charge of an indigenous person from the CHT.

Indigenous identity and re-tribalization

An important cross-cutting matter of the Accord is indigenous culture. This was treated as a fundamental issue by recognition of the CHT as a “tribal inhabited area” in part A., and reiterated, directly and indirectly, in parts B, C and D. The measures included the reservation of a specified number of seats for particular ethnic groups in the regional and the district councils, the proposed introduction of primary education in the mother tongues of the indigenous peoples, granting jurisdiction to the CHT councils over customary law, the recognition of customary land rights through the Land Commission law, and the reinforcement of the traditional chiefs’ advisory, judicial and residential certificate-granting prerogatives.

Implementation

A unique feature of the CHT peace process was the absence of independent third party negotiators or mediators. The mandate of the *liaison committee* that had acted as a go-between during the government-JSS talks was limited merely to carrying messages between the two parties and to the facilitation of the physical meetings of representatives of the two parties. It had no mandate to mediate or to arbitrate. Its members were chosen by the JSS from among people from different walks of life in the CHT – including both indigenous people and ethnic – who were known to be people of integrity and sympathetic towards the cause of the indigenous people. This feature of the absence of third parties seems to have also been carried forward into the implementation phase as no independent third parties were identified to mediate, arbitrate or otherwise resolve disputes or disagreements between the parties in case of disagreement over the process of implementation. The Accord merely mentioned that there would be a three-member implementation committee led by the head of the government’s *Chittagong Hill Tracts Committee* and including the president of the JSS and the chairperson of the *CHT Task Force on Refugees and Displaced People*.¹²

IV. Judging and Prejudging the Accord: Historic Peace versus Sell-out

“Historic peace”

The signing of the CHT Accord brought mixed receptions. The government led by the Awami League was quick to hail it as a “historic agreement”, time and again invoking it as one of its major success stories.¹³ Not long after the event, the UN agency UNESCO even awarded then Prime Minister Sheikh Hasina with a “peace prize”. Conversely, a breakaway faction of indigenous student and youth groups hitherto allied to the JSS – now known as the UPDF (“United People’s Democratic Front”) – unequivocally condemned the Accord as a “sell-out” to “reactionaries” as soon as it was signed, and vowed to continue its struggle for “greater autonomy” and constitutional safeguards. It criticised the Accord for not having provisions on constitutional safeguards, for being unclear on land rights and for absence of provisions on the withdrawal of the army and the repatriation of transmigrated Bengali settlers outside the CHT.¹⁴ Other sections of the indigenous population were more cautious in their comments about the accord itself and adopted a “wait and see” attitude (Mohsin, 1998: 107). However, it would be difficult today to find very many indigenous people in the Chittagong Hill Tracts who are happy with the way the Accord is being implemented.

Compromising Bengali rights & the unitary constitution?

Let us now consider the diverse range of views of the non-indigenous Bengali-speaking inhabitants of the region, who now constitute almost half the population of the region. These people may be divided, for our purpose, into at least three distinct groups: (i) the settlers of the 19th century (the “old Bengalis”), (ii) the spontaneous migrants of the 20th century (the “natural migrants”); and (iii) the Bengali population transferees or transmigrants of the 1980s (“government-sponsored settlers”). Bengalis from all the three groups had initially condemned the accord as having compromised their interest and turned them into “second class citizens” (Ibid.). Many of them even saw the role of “big brother” India behind the accord, as it was widely believed that the guerrillas had used Indian territory, training, arms and other logistics at different periods of the war.¹⁵ They too alleged a sell-out to “Indian hegemonic interests”.

Some of the old Bengalis are now allied with the JSS against the *government-sponsored settlers* but not necessarily against the government of the day. Few of them openly speak against the accord now. The situation of the *natural migrants* (largely traders, manual labourers, etc.), has perhaps changed the least in the post-Accord period, because peace, and more importantly, unhindered mobility and transportation that is a prerequisite for trade and commerce, is still threatened by the inter-indigenous conflict, whereas earlier it was threatened by the guerrilla-army conflict. Leaders from this group are among the least vocal among the Bengalis regarding the accord; not surprising as business people the world over are seldom openly for or against any political grouping.

The last-named, the *government-sponsored settlers*, constitute one of the strongest political groups within the Bengali population. They now have more physical security than before (they are no longer threatened by an active guerrilla force) and still continue to receive food grain support from the government, a system that was introduced since their advent into the region almost twenty-five years ago. Moreover, there is now a Bengali member of parliament from the CHT who has also been given the charge of chairpersonship of the CHT Development Board, which has access to reasonably large sums of development funds. However, they are not content with the status quo, as many of them had expected the present right-of-centre BNP-led coalition government to give them a bigger say in the administration of the region, such as through stronger representation in the regional and district councils.¹⁶ These settlers have been among the most vocal critics of the accord, saying that it has discriminated against them. Many of them rallied around the banner of the right-of-centre BNP, and the right-wing Jamaat-e-Islami Bangladesh - when both of these parties were in opposition – and were prompt to castigate the accord as having compromised the “unitary” character of the republic through what they saw was the establishment of a quasi-federal administrative set-up in the hill region (Schendel, 2000: 66). The aforesaid parties are now partners in a coalition government. Informally, some senior BNP officials have assured indigenous leaders of the CHT that they have agreed to put aside their former reservations about the accord. On the other hand, a number of public statements by some senior members of the cabinet purporting to draw attention to the alleged unconstitutionality of the CHT Accord suggest that many within the government are still against the implementation of the Accord.¹⁷ Until today, these differing, opposed and equivocal views on the CHT Accord remain as stumbling blocks towards sustainable peace between the indigenous people and the Bengalis and towards fuller implementation of the many important but unimplemented provisions of the Accord, including on land, demilitarization, rehabilitation, policing and other agreed upon subjects of devolution.

V. The Accord under Review: Functional, Textual and Subjective Analyses

The relative success or failure of different aspects of the CHT Accord of 1997 can be assessed in various ways. I propose here to analyze the impacts of the Accord from three dimensions. One approach will be to try to understand the causes behind what many consider to be among the “failures” of the Accord, by focusing on two issues: (i) by considering whether the accord omitted certain issues that are vital towards the success of the peace process and hence should have been included; and (ii) by analyzing the dynamics of the pre-Accord developments, including the formal and informal negotiations, and the evolution of the administrative set-up of the region. Since we have already taken a brief look at the political and administrative history of the CHT, we will now only look at the immediate past concerning the pre-Accord negotiations. In the process, I shall also try to examine the question of how democratic and inclusive the process of negotiations was, including the gender dimensions of the accord and the negotiation process.

A second approach will be to attempt to assess the progress in the implementation of the major provisions of the Accord by combining features of what some refer to as the “functional” and “textual” approaches towards analyzing political accords (Singh, 1999:1,2). Thirdly, I shall try to understand the Accord more subjectively, by considering whether the Accord has (so far) achieved what one or both of the parties intended it to achieve. I feel that this is one of the most difficult areas in the politics of accords and perhaps where the available literature has given the least attention. The matter is further compounded by the fact that the major parties to a political agreement like the CHT Accord may in fact be ostensibly representing a position that is itself the result of many subsidiary agreements, compromises and temporary fusions of a vast and pluralistic array of thought, belief, ideology, interest and expediency. I shall also try to explore here whether there were any hidden agenda behind the formal positions taken by the parties to the Accord. This approach may be regarded as belonging to what some call the *subjectivist school* (Ibid: 2). I shall discuss the second approach first.

A functional-textualist assessment

The debate over the implementation and non-implementation of the 1997 Accord was taken to such absurd limits during the latter part of the Awami League government’s rule (the government which signed the accord) that government and indigenous leaders were arguing over the issue by actually using figures (e.g., whether or not the accord was implemented over or under 90% etc.!). Anyway, figures aside, let us look more qualitatively at the matter.

According to the JSS, among the major unimplemented provisions of the Accord are the following commissions and omissions on the part of the government:¹⁸ (i) the non-withdrawal of (all except a few) non-permanent military camps;¹⁹ (ii) the non-transfer of land and law and order matters to the district councils; (iii) the passage of the CHT Land Commission Act of 2001 in violation of provisions of the Accord (reducing the geographical jurisdiction of the commission and providing too much power to its non-indigenous chairperson); (iv) the non-commencement of the work of the Land Commission; and (v) the appointment of non-indigenous persons to the posts of the (cabinet-rank) Minister for Chittagong Hill

Tracts Affairs and the chairperson of the CHT Development Board.²⁰ These matters are relatively straightforward, and the government is not in a position to deny the above. However, some of the other allegations of the JSS are somewhat less unequivocal (but not necessarily without foundation or logic). These include: (vii) the inclusion of non-permanent residents of the region as voters in the recent parliamentary elections (which were participated in by the UPDF but formally boycotted by the JSS); and (viii) the inclusion of non-indigenous people within the list of the “internally displaced”.²¹

Among the issues mentioned above, I would suggest that it is the stalemate on the land related matters that needs the most immediate attention because many believe that the success or failure of the CHT peace process is dependent very largely upon the resolution of the land-related issues (Mohsin, 1998: 114, CHT Commission, 1991: 58). Among them, the most intricate matter will perhaps be the work of the Land Commission, which is to deal with the complex issue of land titles and customary rights. On the one hand, the presence of a majority of indigenous people in the Commission (as provided by law) suggests that customary law will be given due regard, but practical and legal complications may mean that it will take many years before the disputes are resolved (Roy, 2000b: 40, 41). The experiences of the Waitangi Tribunal in New Zealand, which deals with land claims of indigenous Maori people on what are now regarded as “crown” lands, may be potentially helpful towards the work of this commission.²² However, the nomenclature of the aforesaid institutions is actually quite misleading when we consider their functions. The mandate of the (Waitangi) “tribunal” is largely proactive, and inquisitorial: to enquire into the validity of Maori land claims as against the crown. Conversely, the concerned law suggests that the work of the (CHT Land) “commission” will be not to enquire into the truth, as commissions usually do, but to resolve basically adversarial disputes between individual litigants. However, according to the Land Commission law, the exact nature of the Commission’s dispute settlement mechanism will depend to quite an extent upon the way its work procedures are defined by its members, something that remains to be done, after the existing discrepancies in the law are resolved through amendments.

An unwritten agreement on the repatriation of settlers?

Apart from non-implementation of the express provisions of the agreement, the JSS has also claimed that the government has violated the “unwritten” part of the agreement. This agreement allegedly contains provisions for the rehabilitation of the government-sponsored Bengali settlers outside the CHT, which was to have been preceded by the dismantling of “cluster villages” and the stoppage of government rations to the settlers.²³ The government has denied the existence of any such understanding, let alone take any measures to either rehabilitate the settlers outside the CHT or stop their rations. It is worth mentioning here that the European Parliament offered, some years ago, to provide grants to the Government of Bangladesh to help it rehabilitate the settlers outside the CHT, but the proposal was categorically rejected by the government.²⁴

The government-sponsored Bengali settlers make up the only section of the CHT population that has uninterruptedly and regularly received food rations from the government since the 1980s, when they were first resettled here. This clearly suggests that their economic existence in the CHT is artificially subsidized by the government, implying that their situation would otherwise be very marginalized. Indigenous people have demanded that such discriminatory acts be stopped,²⁵ but successive governments have thought otherwise. Among the indigenous people, only the repatriated refugees from India (but not the internally

displaced people) and ex-members of the Shanti Bahini guerrillas receive some food grain support from the government, which is rumoured to be at risk of discontinuance by the present BNP-led government.²⁶

Changing governments and (un) changing policies

The aforesaid situation of omissions and commissions in violation of the Accord includes developments both before and after the change over of government in Bangladesh in 2001, that brought the BNP, the party that was opposed to the 1997 Accord into power, in alliance with the right-wing Jamaat-e-Islami Bangladesh.²⁷ Regarding some matters, such as the presence of the military in the region and the general pattern of providing development grants to CHT institutions, there seems to be no perceptible change in policy. At a much-awaited meeting between the prime minister, the chairperson of the CHT Regional Council (the JSS leader) and the CHT Affairs deputy minister in April, 2002 an uneasy agreement seemed to have been reached to maintain the *status quo* in the CHT.²⁸ However, the appointments to some senior offices involving non-indigenous persons (cabinet-level charge of the CHT Affairs ministry and the chairpersonship of the CHT Development Board) do suggest a shift toward the accommodation of demands of the Bengali settlers. There are rumours that the present government has expressed to its bilateral development partner governments its unwillingness to devolve further powers to the hill district councils, including on land administration.²⁹ Moreover recent anti-Accord statements by senior members of the cabinet and rumours of non-continuation of foodgrain support to ex-fighters and refugees (but not to the government-sponsored Bengali settlers) hints at serious trouble for the Chittagong Hill Tracts peace process.³⁰ Thus an important lesson of the CHT peace process is that implementation of an accord may run into severe difficulties with changeover of governments (especially if those politically opposed to the accord come into power). On the other hand, it is equally true that despite its avowed commitment to rescind the CHT Accord, by continuing to deal with the legal and institutional arrangements that resulted from the Accord, the BNP-led coalition government has signalled its *de facto* and *de jure* acceptance of the CHT accord as a political and administrative reality. This suggests that it may be very difficult for a successor government to repudiate an accord signed by its predecessor government, even through such accords do not have the sanction of international law like international treaties or are otherwise entrenched through constitutional safeguards. The reasons may include the international reputation of a government, and the practical difficulties of *unbirthing* institutionalized creations of accords.³¹ Nevertheless, the relative successes of certain peace and autonomy agreements that are strongly entrenched, such as in Mizoram, India and South Tyrol, Italy suggest that the presence of entrenchment clauses may provide more sustainability to peace processes.³²

Peace-building through reconstructionist development

The period immediately following the signing of the Accord saw a frenzied rush by government development planners, bilateral development partners of the government and representatives of multilateral development agencies (notably the Asian Development Bank, and to a lesser extent, the World Bank) to mount *needs assessment* missions, socio-economic surveys, “grassroots” opinion-seeking dialogues and the like to set the base for medium to large scale development projects in the region. The government invited reconstructionist experts from post-conflict regions worldwide to advise it. Promises were made to restart development interventions with a “bottom-up” approach.

However, given the long history of being victims of so-called development projects that created dams that swallowed up their ancestral homes, concentration camps disguised as “model villages” and “collective

farms”, forest reserves that excluded indigenous people, among others, development projects in the region came to be synonymous with “dislocation, disruption and destruction” (Tripura, 2000: 98). Some said that they would rather stay like the inhabitants of the remoter areas – who remained without formally structured “development” for the entire duration of the internal war – rather than risk being victimized by inappropriate externally-oriented and imposed development projects (Ibid: 100). Large corporate-style NGOs oriented around the internationally-acclaimed *micro credit* schemes were not to be left behind. However, very few of the larger government managed projects could be implemented due to bureaucratic red-tape, and later, due to declining “security” conditions triggered by the abduction of a number of Western European development personnel in 2000. Moreover, the *sectoral* priorities in many of the donor agencies’ policies (favouring health or education or sanitation or as the case might be) sometimes led to either extremely reductionist interventions that overlooked the need for a more integral approach to the post-Accord situation or was too insensitive to work on culture and identity, which would have made it easier for ordinary people to “feel, sense and smell the good effects of the Accord”.³³ Thus the impact of such post-war reconstructionist interventions upon the CHT peace process could not be tested very far. On the other hand, the credit-oriented corporate NGOs and an affiliate of the internationally acclaimed Grameen Bank have indeed done a great deal of banking. They have helped to further monetize the CHT economy but without providing the loanees with ways and means to achieve sustainable livelihoods, leading to increased consumerism and liquidability of lands and other assets rather than a higher standard or quality of living. Recently, a number of donors and lenders have recommenced, very cautiously, and sometimes at a pilot level, some socio-economic development work, including “quick impact” projects. We have to wait and see what their impact is on the peace process. Since the process includes both top-down and relatively inclusive development packages, I would tend to think that the results would be mixed.

Let us turn now to consider the links between peace-building, development and economic matters. One would have thought that given the relative poverty of the CHT region in classical economic terms, developmental and economic matters would be an important factor in rebuilding peace. In fact, in the late 1970s and early 80s, the government had seen the CHT problem as a purely “economic” problem and hence one that could be solved through “developmental” interventions. We know that these interventions did not succeed in either bringing the guerrillas to peace talks with the government or to reduce the political support towards the autonomy movement. Of course, this may have been the case because not because economic development was unimportant to the CHT people, but because the concerned programmes did not bring real benefits to them or were too small in scale. In any case, when asked about it, many CHT people did not seem to regard economic matters as highly relevant towards the success or failure of the CHT peace process, as they did the presence or absence of violence and the nature of ethnic relations.³⁴

The aforesaid developments would appear, on the face of it, to reinforce the conclusion from the “Coming Out of Violence” study of five conflict-ridden societies (South Africa, Northern Ireland, Israel-Palestine, the Basque country and Sri Lanka), that “economic factors appear to have the lowest influence on the success or failure of a peace process” (Darby and MacGinty: 251).³⁵ However, that is perhaps a somewhat oversimplified approach because considering violence and ethnic relations as more important factors than economic matters towards peace-building does not necessarily mean that economic factors *in fact* had less impact on peace processes than other factors. After all, it is difficult to imagine that developments such as the appropriation of the indigenous peoples’ forest commons by the government, the inundation

and displacement caused by the Kaptai Dam, the land dispossession caused by the Bengali transmigrants, and economic exploitation by unscrupulous traders and money-lenders, were merely minor factors in fuelling feelings of deprivation, injustice and neglect in the formative years of the unrest. Therefore, economic issues may *appear* to be relatively unimportant to many, but there should nevertheless be little doubt that they do matter towards the success or failure of peace processes such as in the CHT and in other economically marginalized societies, no matter what respondents say when asked about the matter.

What did they really want?

Thus we see that although economic factors are important towards the success or failure of peace processes, mainstream development interventions may be insufficient by themselves to usher in lasting peace, or at least a peace that is fair and just. Perhaps the post-Accord developments in Mindanao, Philippines and in Tripura State, Bodoland and Darjeeling in India could offer many insights into the positive and negative impacts of developmental interventions and their limitations in “post-Accord”, if not “post-conflict”, situations.³⁶ At the very beginning, I had posed the question of the relative wishes, aspirations and expectations of the parties to the 1997 Accord. Let us revisit that question. Did the JSS and the Government of Bangladesh actually have a shared vision of a post peace-agreement Chittagong Hill Tracts?

The dispute between the JSS and the previous Awami League-led government over the “unwritten” part of the agreement and on some other matters forces us to conclude that they most certainly had quite different conceptions about various crucial matters, including on the continued presence of the settlers and the temporary military camps in the CHT, and also most likely on the question of policing and law and order, and on the equally important question of land. I would venture to guess that with an optimistic view the JSS may have expected the following scenario in the post-Accord situation: (i) settlers and army departed; (ii) an authoritative regional council to oversee the CHT administration; (iii) the resolution of land disputes by annulment of the settlers’ land titles; and (iv) land and multi-ethnic police administration in the hands of the hill district councils. Actually, none of the above developments has occurred.

It is unlikely that all members of the JSS were so trusting that they actually expected the Government to carry out all its undertakings, at least over a short period of time. Therefore, I would suppose that many within the JSS might have had serious misgivings about the process of implementation and the goodwill of the government of the day. What did they think? And what was their fallback position if the government reneged upon its promise, or at least if it did not implement key provisions of the agreement? The contingency plans of the JSS, if any, have not been made known to the public. However, there is little doubt that in the climate of a violence-weary CHT, and the omnipresence of security forces in the region, means other than pressure through civil and civic means are hardly viable. Such pressures too are monumental efforts in a majoritarian polity that has traditionally been unsympathetic to minorities. Some have suggested that the persuasive leverage of major donors and lenders to the partially aid-dependent economy of Bangladesh could have a bearing on the nature and pace of implementation of the Accord.³⁷ Given that the 1997 Accord contains no clauses for third party monitoring of its implementation, this may be one of the few avenues left to the non-state party, in this case the people of the CHT, to pressurise the government. As in the case of the JSS, the UPDF too has not made public its policy or strategy on making the government keep its promises, but it is unlikely that its choices are any greater than that of the JSS.³⁸

Now what about the government negotiators? Did they expect to implement all that they had expressly agreed to in the Accord, not to mention their “unwritten” pledges (which I personally believe that they did make)? I can think of two alternatives. One was that the government side never really believed in implementing all its commitments but was ready to promise the earth to induce the guerrillas to lay their arms down and come back to normal life. Once the guerrillas gave up their arms, there was little they could do, especially as the peace process seemed to have the support of the Government of India, which was crucial because of India’s long, mountainous and forested border with the Hill Tracts, which served as the most strategic bases for the guerrilla camps. Therefore, the lesson to students of “ethnic” peace processes is that in order to ensure that the parties comply with their obligations, mechanisms should be in place (i) to either make quid pro quo arrangements and carry out the mutual obligations on a parallel basis in phases, or (ii) to ensure the effective mediation of a third party to enforce the Accord. In fact, Darby and MacGinty believe that:

“To make sure that agreements are fully implemented and sustained post-agreement political activity is required. The danger is that parties may wish to disregard or re-negotiate some provisions in an agreement that they find unpalatable. Some peace accords attempt to anticipate such problems by building safeguards or penalties for non-compliance into the agreement. The bottom line, however, is a strong political will to implement an agreement.” (Darby & MacGinty, 2000: 259).

The above observation applies very well to the CHT situation. The difficulty is how does one foster such a political will on the part of the government. To help forge such a will may well call for involvement in a political arena that is situated far from the marginalized ethnic minority’s peripheral region, and where the rules are made by those who have little sympathy, and even less knowledge, about the indigenous people, but share a vague idea that the country requires these peoples’ common resources.

The second of the two alternatives mentioned, namely, the mediation of a third party is among the suggestions made by Richardson and Wang (1993:190). In this case, SAARC would have been a possible third-party mediator, but the CHT peace process had no distinguishable third party, as third party mediation (other than as a liaison agent) was categorically rejected by the government negotiators.³⁹ As regards the first alternative mentioned above, a writer on the CHT did suggest, before the conclusion of the CHT negotiations, that the repatriation of the international Pahari refugees (then sheltered in India) from India to Bangladesh should be linked with a parallel rehabilitation of Bengali settlers outside the CHT (Roy, R. C. K., 2000:158, 159). Yet another alternative to ensure the implementation of agreements is a suggestion by Darby and MacGinty (2000: 25) 9 to build safeguards or penalties for non-compliance into the agreement. This was not done in the case of the CHT Accord of 1997 for reasons not known. Although it is easy to conceive, retrospectively, that such provisions may have deterred non-implementation on the part of the government, ultimately the question would perhaps have depended upon both the nature of the sanctions to be imposed, and the presence of an independent and strong mediator or other third party that was charged with imposing the sanctions.

Some of the available literature on peace processes, such as those referred to above (e.g., Richardson and Wang, 1993 and Darby and MacGinty, 2000) seems to strongly recommend third party mediation in an unqualified manner as necessarily benevolent and positive. They also seem to stress on the usefulness

of sanctions in deterring non-compliance with responsibilities under an accord. However, it is well to remember that there may be situations in which a strong “third party” may well impose a “solution” that is contrary to the interest of a party, especially the usually weaker non-state party, or one that benefits not the parties to the conflict or accord as such, but the mediating third party itself.⁴⁰ Similarly, it is well not to overlook or underestimate the potential value of positive inducements or “carrots”, as against negative sanctions or “sticks”. In many situations where a party is guilty of non-implementation, especially where it concerns the state-party, it may make much more sense to talk of positive and negative inducements of “carrots, no carrots or big carrots” (providing or withholding aid, loans or other trade, political office or financial benefits and opportunities) rather than about sanctions and “sticks”.⁴¹ Such an approach may also have the advantage of not unduly embarrassing the guilty party, especially if it is a state, as states are almost always concerned about their reputation and “sovereignty”.

The repatriation of the Pahari refugees to Bangladesh from their camps in India was done in phases. I am firmly of the opinion that this phased repatriation helped ensure that the refugees received *most*, if not all, of what they were promised by way of return of dispossessed lands, grants of money and foodgrain rations, etc. Taking for a moment the side of the autonomist underdogs, one could say with proverbial hindsight that decommissioning and arms hand-over by the guerrillas could have been linked to the dismantling of military camps and/or the rehabilitation of the government sponsored settlers outside the CHT to help ensure better implementation by the government. Of course, these were the *theoretical* options that were open to the JSS. Political exigencies may of course have suggested otherwise, both in the case of the CHT and in other comparable peace processes.

At a recent “experts meeting” on difficulties of implementation of intrastate peace agreements held in Sitges in Spain, the participants felt that it was vitally important to expressly include clauses on implementation mechanisms into the accord, and to ensure the presence of other factors as mentioned below, to ensure that peace processes are sustained, accords implemented and potential parties to future accords confident about reaching an accord. The observations and suggestions included the following:

- “The inclusiveness of the peace/negotiation process;
- quid pro quo arrangements in phased implementation;
- building implementation safeguards into the agreements;
- inclusion of arbitration, facilitation or mediation arrangements for certain aspects, components of peace and autonomy agreements.”⁴²

In retrospect, it could be said that the safeguards such as those referred to above may well have benefited the CHT process and avoided the current impasse had they been incorporated into the accord. That is of course a matter of conjecture. In any case, let us now look at the process of negotiations, which might throw more light upon the problems in the implementation stage and even explain the reasons behind why safeguard arrangements, such as those referred to in the Sitges meeting, were not included in the text of the CHT Accord of 1997.

VI. Negotiations: Agreeing to Agree?

Negotiating the CHT Accord: Ceasefire and trust building

An important but largely unexplored dimension of the negotiation process was the little known pre-formal exchange of messages between the parties that has led some to believe that they had “agreed to agree, whatever the contents of the accord might be”. Whether this is completely true will perhaps never be known, but there are clear indications that a strong political will at the highest levels of JSS and the Bangladesh government was favouring an agreement. This may suggest one of two things, amongst others: one: that the parties were able to develop trust based upon the idea of a *win-win* situation for both, which required their mutual cooperation. Conversely, one could say that the two parties *needed* the accord to get out of a situation that may be described as a “mutually hurting stalemate” (Richardson & Wang, 1993: 171). The second, among other, possibilities, was that there were strong but discreetly communicated inducements from external sources (encouragement from persuasive lobbies like India, Western donor agencies, oil and gas lobbies?).⁴³ Given the complexities of the matter, it may yet take awhile to uncover the exact nature and extent of such inducements, if any. However, the inclination towards “agreeing to agree” suggests a level of growth of mutual confidence and trust, and this is not unique to the CHT peace process.

As regards the situation of a “hurting stalemate”, I am inclined to think that it applied much more in the case of the JSS, than the Government of Bangladesh, as the JSS was under tremendous pressure from a violence-weary and economically, socially and educationally deprived CHT society to reach a peaceful settlement. In the case of the government, although its economic burden was high, and its international image had suffered somewhat because of allegations of human rights violations, the situation was perhaps far less “hurtful” than in the case of the JSS. On the other hand, difficulties with nagging economic issues, and consequently, the desire for a political achievement to placate its supporters and to score against its political opponents, may have been a far stronger factor that induced it to enter into the negotiations with a strong political will. In addition, I would also not rule out altruistic feelings on the part of *some* of the senior government leaders, either. Be that as it may, the nature of the negotiations do suggest that the parties were in some ways racing against time, perhaps out of a fear of subversion by “spoilers”. This may perhaps at least partly explain why the Accord provisions on implementation, including on specific time frames, are few and rather vague.

Among other lessons that the CHT negotiations process offers us are the impacts of the ceasefire and earlier accords upon the negotiations leading up to the 1997 Accord. The 1997 Accord on the CHT was preceded by two other political agreements on the CHT in recent times, the Priti Group Accord of 1985 and the so-called “Moderate Leaders’ Agreement” of 1988 that had bye-passed the then underground JSS. The Priti Group Accord of 1985 was signed by a breakaway faction of the JSS and the army commander of the Chittagong-CHT region. Besides ensuring the surrender of these renegade guerrillas, little of substance resulted from it, including on the only substantive issues covered in the accord: (i) the return of dispossessed lands to the indigenous people; and (ii) a halt to further population transfer. We can perhaps draw two lessons from this: one, that viewed from a long-term perspective, the negotiation and

the implementation stage can be viewed as a process rather than mutually exclusive phases (impliedly then, the boundary between peace and conflict/war cannot also be drawn so very easily).⁴⁴ Second, that to achieve results, you had to have an agreement that involves the political arm of the government at the highest possible levels, and not a mere bureaucrat. (Conversely, however, the post 1997 situation can also suggest that implementation may be difficult even with broad political support, if the bureaucracy does not support it). But then again, even if the 1988 agreement was signed only with political “lightweights” on the side of the indigenous people, it did lay down the basis for the district council system, which was strengthened through the 1997 Accord. Thus a seemingly weak political agreement may in fact have disproportionately high and long-lasting legal and administrative implications.

The ceasefire process in the CHT also has some very interesting features. During the ceasefire, the army complained that the JSS was using it to reorganize, rest, gather intelligence, and strengthen itself, since the army was no longer at liberty to apprehend or confront suspected guerrillas. On the other hand, the guerrilla leaders feared that too long a cease-fire might make it difficult for their battle-weary fighters to go back to war should the negotiations fail. Therefore, it seems that a long ceasefire can create a great deal of pressure upon an underground guerrilla force to forsake war and settle for peace. This is because a ceasefire may be the only wartime opportunity for an underground fighter to freely meet his (and less occasionally, her) family and friends without fear of arrest or death and to enter into a free dialogue with “civil society” and feel the pulse of the people’s wishes and aspirations, besides seeing for herself or himself the havoc caused by the war upon non-combatants.

A bird’s eye view of the pre-accord negotiation process in the CHT suggest that *some*, but not all, of the five “preconditions” of successful accords as identified by Richardson and Wang were present in the case of the CHT, in varying degrees. Of the preconditions: (i) the emergence of identifiable bargaining parties; (ii) evidence of a mutually hurting stalemate; (iii) the existence of leaders determined on a practical solution; (iv) external political actors supporting conflict resolution; and (v) the presence of a mediator actively on the scene, it seems that the first to the third preconditions were present in some degree. However, as mentioned earlier regarding the second pre-condition, the ensuing conditions could be seen as a “situation of advantage” for one of the parties (the state) and as a “hurting stalemate” for the other party (the non-state party). One could think of encouraging signs from the Government of India and other important countries as “support from external political actors”, but nothing certain is known publicly of any such influences, if any. Therefore, it is difficult to ascertain whether the fourth pre-condition was met in the CHT process. Lastly, the fifth and last pre-condition concerning the mediator, was not met here, as I have mentioned earlier, unless we count the Liaison Committee as a mediator. In the circumstances, we may conclude that the theories provided in the Darby and MacGinty study have limited, but not determinate, relevance in understanding peace processes such as in the CHT.

Democracy & transparency in the negotiation process

The success or failure of many peace processes in different parts of the world has depended, to a great extent, not only upon the contents of the accords themselves but upon the process of negotiations that led to the signing of the concerned accord. So many writers have stressed on the importance of democracy and transparency that I do not feel I need to refer to them in particular. In the case of the CHT peace process too there were severe complaints that the process of negotiations – including the internal process of consultations conducted by the JSS and the government – was secretive and non-inclusive. Some

members of the indigenous peoples with relatively small populations have complained that the JSS did not consult them in a substantive manner, or consider their wishes, as regards their representation in the CHJT self-government system. They feel that this is reflected in the non-representation and under-representation of their groups in the district and regional councils. A section of indigenous society living in the urban areas and peri-urban settlements of the CHT has also complained likewise. Conversely, on the side of the government, there were complaints that the issue was not adequately debated upon in the national parliament or discussed with larger civil society.

I believe that the aforesaid allegations are not without substance. A more inclusive process of consultations by the JSS may well have led to wider support towards the 1997 Accord among the indigenous population. As for the views of the UPDF during the negotiations, the question was not so much its exclusion from the negotiation process but its voluntary rejection of the process as one that was doomed to failure because of what they considered were its “inherent weaknesses”, such as the denial of demands for constitutional safeguards and the absence of written commitments for the repatriation of the government-sponsored Bengali settlers back to the plains.

On the question of the government’s consultative process, “democracy” and “transparency” may seem desirable ends by themselves, but if these concepts were to mean the agreement of the majority and open discussions with all major sections of civil society on the proposed devolution package, we might have had no Accord on the CHT or an accord that was even weaker on autonomy and devolution than it currently is. Similar peace processes in neighbouring Northeast India show that the contents of the accord were decided upon by the leaders first, and presented to parliament, for endorsement or comment, later, as a *fait accompli*. If that had not happened, many anti-indigenous lobbies acting as “spoilers” might well have subverted the delicate process of peace negotiations. This could well have happened in the case of the CHT, as well as in other similar peace processes.

Another noteworthy feature of the recent CHT negotiations was the inadequacy of expert technical advice. On the side of the JSS, there was none with direct legal and administrative experience, although its knowledge on CHT laws was generally greater than that of the government negotiators. Of course, it did consult lawyers and other experts, but these were more through cumbersome written communications rather than direct oral discussions. The government side of course had easier access to legal and other technical advice, but its knowledge on CHT law and administration sometimes acted as an obstacle towards progress. These shortcomings, if they may be seen as such, may well have contributed towards a lack of clarity in the framing of certain provisions in the Accord. It is a matter of conjecture whether greater access to technical support on the side of the JSS (and arguably greater “sensitization” on CHT issues on the part of the government negotiators) would have produced a better accord, but at least it may have reduced, if not prevented, differing interpretations of the Accord on such issues as the electorate, the definition of internally displaced persons, the extent of the regional council’s supervisory authority, etc.

VII. Wishful Reconstruction: **What the Accord should have Included**

Accepting, at least for the moment, that the success or failure of an accord needs to be judged over a long period and from both a subjective and an objective perspective, I would offer some observations on some crucial issues that were either not addressed or were inadequately addressed in the 1997 Accord. These are not my personal views (although I agree with many of them) but the views of different sections of the CHT population, including that of members of the different indigenous peoples, that have been expressed over the last five years verbally and in print, in formal and informal fora. Consideration of these views is important not so much as an intellectual exercise in analyzing the Accord but because adequate attention to these matters, or at least to some of them, are still possible and desirable even though they were not addressed or sufficiently addressed in the Accord. Since many of these opinions are held with strong convictions by large sections of the CHT population, I believe that due regard to these views would help sustain and strengthen the CHT peace process. This is important both because the continued non-acknowledgement of these demands and aspirations may fuel newer conflicts, but also because a sustained “peace with justice” cannot be brought about without paying attention to such matters. This may call for attempts to address the needs and wants of the marginalized within the marginalized, including the less numerous indigenous peoples, and disadvantaged communities within all the indigenous peoples, whose voices we do not hear today, because they do not speak with guns, have no money, little education, and few friends.

De-marginalizing the indigenous peoples with small populations

More safeguards should and could have been provided for the interest of the less numerous indigenous peoples whose economic conditions and relative lack of access to education and other basic needs make them far more socially, politically and economically vulnerable and marginalized than the more numerous indigenous peoples. The representation of these peoples in the district and regional councils is not adequate, as has been mentioned by leaders of many of their organizations. The self-determination right of the indigenous peoples of the CHT to have a separate system of regional government (with primacy to the indigenous people) is based not on the strength of their population, but their distinctiveness as peoples (They could not otherwise justify a two-thirds majority in the CHT councils with less than two-thirds of the CHT population).⁴⁵ However, the indigenous population of the CHT has little political significance unless one acknowledges that it is composed of distinct peoples, with their respective rights to self-determination, as provided in the UN Charter and other United Nations instruments.⁴⁶ Therefore, logically, morally, legally and strategically, one cannot espouse the self-determination rights of all the indigenous peoples of the region together without acknowledging and respecting the self-determination right of each people, however small its population or relative political, social and economic strength.

Constitutional safeguards

The 1997 Accord is not protected by constitutional safeguards. This has three major implications, among others. One implication is that, since the legislation resulting from the Accord enacted, in effect, only ordinary laws, these are liable to be amended with a simple majority in parliament. Given that the CHT has three representatives in parliament (one being a non-indigenous person) out of 300, at least theoretically, this could mean that this government or a future government that disagreed with substantial devolution of powers to the CHT could initiate legislation that has the effect of revoking the Accord or at least of diluting

its provisions.⁴⁷ Secondly, the absence of constitutional recognition of the special administrative status of the CHT and the cultural identities of the CHT peoples may and usually does mean the absence of long-term and fuller commitments to the rights and needs of the peoples of the CHT. In India, for example, specific legislative and administrative measures are periodically undertaken by invoking the constitutional provisions on positive discrimination favouring the women, *lower castes* (“scheduled castes”) and indigenous peoples (“scheduled tribes”). The comparable provisions in the Bangladeshi constitution refer to women, children and the “backward section of citizens”. The scarcity of legal provisions that address matters of interest to the indigenous peoples of the country, especially in regions outside the CHT, is clearly noticeable, and is perhaps because the only reference to the indigenous peoples in the national constitution is indirect, equivocal, inaccurate and disrespectful. The vague expression of *backward section of citizens* in the constitution may well refer to *any* disadvantaged section of the citizenry. Thirdly, the absence of direct constitutional backing for the CHT self-government system with its primacy to indigenous peoples makes it susceptible to legal challenges in the High Court as a potentially unconstitutional arrangement (Roy, 2000a).⁴⁸ In fact, two writ petitions that have challenged the constitutionality of the Hill District Council Acts of 1989 and the CHT Regional Council Act of 1998 are now being heard, analogously, by a two-member High Court bench of the Bangladesh Supreme Court.⁴⁹

Gender

Considerations of gender do not seem conspicuous in the 1997 accord, and is perhaps not surprising when we recall that the negotiators on both sides in the recent CHT negotiations included only men. Only *one-seventh* of the seats in the district councils and in the regional council are to be reserved exclusively for women. Pending elections, the regional and district councils are composed of government appointees, and in the case of the district councils, apart from one chairperson, none of their members are women. Women are even more severely under-represented in the traditional and largely hereditary institutions of the chiefs and sub-chiefs (*raja, headman and karbari*). Although women of most indigenous communities in the CHT have comparatively less social restrictions, and consequently more mobility, than women in the plains regions of the country, their roles in the social and political spheres still remain as marginal, if not more marginal, than in the case of their sisters in the plains. Given their invaluable inputs in the social, cultural and economic spheres, whether as farmers, family workers or employees in the public and private sectors, or as leaders, litterateurs, etc., it is ironic that their contributions remain “invisible” and unacknowledged (Halim, 2002).

Women in the CHT have been at the forefront of the indigenous peoples’ struggle for self-determination, cultural identity and resistance to colonization. These include women from very humble backgrounds that led their people against injustice, including a peasant woman in the mid-19th century who became the Chakma queen and resisted British annexation (Lewin, 1869: 49,50), and a young college girl who resisted both gender discrimination by her own people and oppressive acts by the state military in the 1980s (Guhathakurta, 1997 and 2000). Similarly, women have played vital roles in revolutionary movements in Latin America, Africa, South Asia and many other places (Hilhorst and Frerks, 1999: 11-14). Indigenous women are being more vocal in demanding equal rights and it is no longer either possible, or desirable, to ignore their rights. At a recent international conference on *Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples* in the Philippines, it was noted that despite their key roles in peace-building, indigenous women were not adequately represented in relevant peace negotiations. The conference urged upon all to ensure that the obligations as set out in the *Convention on*

the Elimination of All Forms of Discrimination against Women (CEDAW) should be integrated into peace accords (Tebtebba Foundation, 2000: 42).

Environment, biodiversity & rights of forest-dwellers

Environmental issues have not been directly addressed in the Accord, despite the huge environmental problems being faced in the CHT such as with regard to deforestation, mono plantations and industrial logging, siltation of the rivers and lakes, floods, the drying up of streams, springs and other aquifers, and the arbitrary killing of rare species of wildlife, including elephant, bison and bear for sale in a black market that is linked to Southeast Asia and Hong Kong. The Accord does not mention the reserved forests, covering about a quarter of the CHT, which have been centrally administered by the central Forest Department since British times, and still remain outside the jurisdiction of the district and regional councils. The colonial style management of these forests as mono plantation enclaves has not only caused huge ecological damage but has also violated the human rights of traditional forest dwellers who keep on being oppressed by armed Forest guards and treated like medieval serfs (Roy & Gain, 1999, Roy & Halim, 2001).

Psychological & justice dimensions of the conflict

Many feel that the matter of the psychological wounds that were caused by the conflict, especially as regards women and children, and those who lost family members during the conflict, should have been addressed, or at least acknowledged, in the Accord. Furthermore, in order to be able to diffuse the ethnic tensions that resulted from more than two decades of insurgency, militarization, political unrest, land dispossession and displacement, concerted efforts will be required in attempting to bring forth real reconciliation between the ethnic groups, especially between the ethnic Bengali people and the hillpeople, and to reduce the real and perceived feelings of domination of one ethnic group by another. On the Bengali side, events to commemorate the deaths of non-combatant settlers, allegedly by indigenous guerrillas, are occasionally observed. On the other side of the coin, the killing of indigenous people by Bengali settlers and state forces has also not been forgotten. Therefore, the issue of justice and reconciliation is still far from resolved. The *Coming Out of Violence* study concluded that it was extremely important to address the needs of victims of violence and considered the different approaches taken in the former Yugoslavia, Chile and especially South Africa, where the *Truth and Reconciliation Commission* was established (Darby and Mac Ginty, 2000: 257, 258). However, the study also points out that most of these alternatives dealt with individual victims rather than what it calls the “collective heritage “ of violence (Ibid, 257). The study does not, however, offer any concrete suggestions on how this collective dimension of physical and structural violence may be addressed. The CHT situation suggests that much more attention is needed on these issues than is being provided by the development-oriented post accord “packages”. Perhaps the example of the “restorative justice system” employed in the Bougainville peace process in Papua New Guinea, involving a combination of apologies, sanctions and compensation, amongst others, could help bring about greater reconciliation in the CHT (Atsir, 2003: 8,9).

Fiscal autonomy

Given the recent international trends towards the strengthening of the free market system (and the rapid pace of monetization of hitherto subsistence-oriented micro economies), which has a great deal of influence on a small and aid-dependent economy like that of Bangladesh's, fiscal autonomy should certainly have been given far more importance than it received in the CHT Accord. In the absence of real

fiscal autonomy, self-government or autonomy, in accordance with the aspirations of the people of the CHT, may remain elusive, and illusory, for many more years to come. Since the potential capacity of the CHT councils to raise significant sums of money from local taxes still remains quite weak, they will continue to be very largely dependent upon external input of funds, including grants from the Government of Bangladesh whether from its own sources or facilitated through grants from its foreign development partners (donors) or through loans from multilateral development banks. This process would of course be dependent largely upon the policies formulated in the capital city by the national government. Apart from very fast macro economic growth in the region through agricultural or industrial development, or border trade, the other viable sources of revenue for the CHT councils include royalties on forest produce and on minerals in accordance with the 1997 Accord and the Hill District Council (Amendment) Acts of 1998, potential sources of revenue hitherto untapped. Of course, this may well call for difficult negotiations with the Government of Bangladesh to secure a reasonable share of such royalties, but may yet be easier than bringing about further devolution on politically “sensitive” matters such as police and law and order, at least in the very near future.

VIII. The Challenges Ahead: **Consolidating Peace & Strengthening Self-Government**

Of the major challenges that lie ahead for the CHT peace process, I would identify the following five: (i) to bring about a peaceful and negotiated end to the intra-indigenous violence; (ii) to reduce the chances of settler-indigenous violence; (iii) to strengthen and “humanitize” the CHT self-government institutions; (iv) to continue efforts to otherwise implement the unimplemented provisions of CHT Accord; and (v) to protect and promote basic human rights, whether or not they are specifically mentioned in the 1997 Accord.

The intra-indigenous violence

The current intra-indigenous violence is perhaps keeping the pressure off the indigenous-settler conflict over political rights and natural resources for the time being, but it is weakening the indigenous people in various ways. Since the conflict is largely concentrated in the Chakma-inhabited areas, it is mostly the Chakma who are the direct victims of violence, but members of the other ethnic groups are also affected by the conflict in various ways due to restrictions on travel, pressure on business people and even ordinary people to pay “contributions”, and so forth. Indigenous society in the CHT, therefore, is getting more and more divided, its economy dwindling, and its social and human development through healthcare, education and training, among others, is about to stagnate. Bengali-speaking people too are suffering in the CHT, both as victims of violence or of extortion. A number of attempts by local indigenous people to broker a truce have failed. Perhaps the only thing that may force the warring parties to stop fighting is for them to realise that such warfare does amount to what Richardson and Wang call a “mutually hurting stalemate”, and that the only way out is peace. That, however, is not the mutual perception at the moment. If the parties do not find a way to stop the violence, the implementation of the 1997 Accord will almost certainly be delayed further, and the historical process of marginalization will continue indefinitely. This may also lead more and more indigenous people away from politics in general or encourage them to seek alternative political affiliations. There is little doubt that the CHT people have had enough of violence and that they want peace.⁵⁰ This is perhaps the most important challenge facing the indigenous people. Only if they can stop the violence and conflict can they unitedly pool their resources to put pressure on the

Government of Bangladesh, to implement the CHT Accord, provide constitutional safeguards to the CHT self-government package, resolve the land disputes, and bring forth social and economic development in the region. Since somewhat formal approaches to a bipartite dialogue have failed so far, another way out, to bring together members and supporters of the two groups under the auspices of “civil society” fora to discuss formally “non-political” matters pertaining to the CHT, such as development and culture. This may be a starting point, from which political issues may be introduced at later stages. Such meetings would be relatively easier outside the CHT, whether within or outside Bangladesh, and can be initiated by any person or institution trusted by the two parties. Some attempts along these lines may have failed so far, but the stakes are too high to give up as yet.

Settler-indigenous conflict

The fragile peace process in the CHT is threatened from different fronts. Besides showing no signs of any abatement of violence between the pro and anti-Accordists, some of the old wounds of the internal war are now showing signs of opening up; to again pit the indigenous people and the Bengali settlers in acts of violence against each other. Seemingly mundane disputes over newly-surfaced river-bed rice fields, over common pool resources like forests, pastures and water bodies, and over buying and selling of farm produce and other commodities are commonplace.⁵¹ They usually do not involve violence, but that is not always the case. The CHT has numerous examples where a single act of violence by a member of an indigenous group against a Bengali person, or vice versa, for whatever reason, can spark of an ethnic riot of large proportions.

However, there are some differences in the manner of reactions. When hillpeople are the victims, the reaction is usually limited to peaceful demonstrations or petitioning of the authorities. Unfortunately, in the several instances of organized violence against the indigenous people over the past few years, very little seems to be been done by the police or other state authorities to bring the perpetrators of violence to justice.⁵² This may not be surprising to some since the law enforcing agencies in the CHT are almost exclusively composed of ethnic Bengalis. In the circumstances, the presence of discriminatory practices against the indigenous people cannot be ruled out. CHT leaders have therefore sought to have *Law and Order* transferred as a subject to the district councils and have also asked for the deployment of a multi-ethnic police force in the region. These demands have not, however, been accepted to date. The government has consistently chosen to ignore the provisions of the Hill District Council laws that authorize the councils to recruit local police. In this regard there would seem to be no perceptible difference of views between the erstwhile ruling party, Awami League, and the present coalition led by the BNP.

On the other hand, in cases where the victim of such violence is a Bengali, if the authorities do not take prompt action against the guilty indigenous person or persons, Bengali mobs have been seen to take strong punitive action, not necessarily against the guilty person(s), but against any indigenous people who happen to pass through the nearest Bengali-controlled highway or waterway. Thus the recent history of the CHT shows that ethnic conflicts can indeed be quite “intractable” (Richardson and Wang, 1999) and that it is quite difficult to bring about a genuinely symbiotic relationship between peoples who have shared a long history of conflict over scarce resources and exploitation of one by the other (Mey, 1984:88). However, the indigenous people and the Bengali-speaking people of the CHT have no other sound alternative but to seek to peacefully co-exist. They need to keep on exploring more innovative ways and means of giving each other “space”, in the political sense, and in the physical and geographical sense at a

micro level, and by trying to enhance mutual tolerance and respect through increased interaction in social and cultural spheres, amongst others.

It is not easy to get away from the legacy of violence and mistrust. Therefore, some writers like Donald Horowitz⁵³ and Eric Nordlinger⁵⁴ have argued that the best way to deal with such conflicts is not to seek its total eradication, but to attempt to bring about the reduction, containment and regulation of such (ethnic) conflicts (Richardson & Wang, 1993: 178, 179). In fact that is what many CHT leaders have also sought to do over the years. Nordlinger suggests that the presence of six conflict-regulating practices prevented ethnic violence in such multi-ethnic societies like Belgium, Netherlands, Austria, Switzerland, Lebanon and Malaysia for a long time. These practices were: (i) A stable coalition between the governing parties; (ii) the principle of proportionality; (iii) acceptance of a mutual veto; (iv) purposive depoliticization; (v) mutual adjustment of conflicting values and interests through compromise; and (vi) concessions by the stronger group (Ibid). While such an analysis might help us understand the presence of various practices of coexistence and accommodation within multi-ethnic societies such as the CHT, and be of some use in helping reduce indigenous-Bengali conflicts in the region, its value is reduced by the fact that the presence of factors other than the above six may well have been decisive agents that helped reduce or peacefully transform conflicts in the aforementioned multi-ethnic societies. The usefulness of the above perspective is also reduced when we have regard to the hugely differing social, political, economic and cultural dynamics of different societies beset by politically induced violence. Nevertheless, it may be worthwhile to attempt to bring about at least some of Nordlinger's six practices in indigenous-Bengali relations in the CHT. And above all, attempts should continue to encourage or pressurize the Government of Bangladesh and its functionaries to not only refrain from acts that are biased towards the Bengali and against the indigenous people, but to be actively seen in their non-discriminatory roles.

Degovernmentalizing the CHT self-government institutions

Some writers have suggested that that the impact of accords is short-lived because they are inevitably reduced into de-humanized, de-socialized or "governmentalized" power relations (Singh, 1999, Samaddar, 1999, Ahmed et al, 2002.). While "governmentalization" in the sense of over-bureaucratization and insensitivity of government officials towards the general people's needs, wants and aspirations certainly needs to be prevented or reduced, a certain amount of bureaucratization of any autonomy arrangement is perhaps unavoidable. Perhaps in that sense, we can think of a certain level of governmentalization as a necessary evil, as Max Weber thought, until such time as more viable forms of *agovernmentalized* alternatives to strengthening the self-government rights of indigenous peoples and other marginalized minorities, and to otherwise implement peace accords, are discovered or constructed.

The aforesaid critics of "governmentalization" of Accords also seem to see the state, or at least its South Asian variant, as having its own ways of imposing its will by camouflaging its acts of domination through strategic means, including peace accords (Singh, 1999). This is perhaps not so difficult to see in some peace agreements such as the Shillong Accord of 1975 on the Naga issue⁵⁵, the 1985 Priti Group agreement in the CHT, the different Accords in the Indian State of Tripura in the 1980s and 90s, the Gurkhaland Accord in India, and perhaps even the recent peace process in Nepal. Perhaps the Mizoram Accord of 1986 stands out as a lone precedent in successful peace consolidation and the securing of an indigenous people's right to self-government, and its constitutional right of veto over its land and customary rights, including the right to prevent the entry of non-indigenous people into its territory.⁵⁶ The

limited extent of immigration into Mizoram and its strong autonomy arrangement seems to have the potential to protect the cultural integrity of the Mizos (as they see it) for a long time to come (Nunthera, 2000).

In the case of the CHT, the self-government arrangements are not as extensive or as entrenched as in the case of Mizoram, but they may well lead to a marked improvement of the CHT situation if the CHT councils were indeed allowed to exercise their legal prerogatives. Despite negative perceptions towards it, it may well be politically difficult for any Bangladeshi government to completely undo the impact of the 1997 Accord. From a positive vein, we may even look at the CHT Accord's potential influence on the Bangladeshi state to help it move towards further decentralization, if not quite quasi-federalism (Schendel, 2000).

One positive development towards further *degovernmentalizing* the CHT system might be to have elections to the district and regional councils, even though the risk of a certain amount of ethnicization and parochial politics cannot be ruled out. Elections are important, amongst others, because elected leaders with a clear and democratic mandate can more easily share their challenges with their people than leaders without such mandate. Therefore, the most immediate task in this regard would be to finish compiling the special CHT voters' list with the permanent residents in accordance with the 1997 Accord. Even then, many problems may still remain unresolved, including the question of constitutional recognition of the indigenous peoples, discrimination against indigenous peoples and other threats to the indigenous peoples' cultural integrity that were not, and perhaps could not, be expressly addressed by the CHT Accord.

Towards implementation

Intra-state accords in different parts of the world are continually being made, broken, abused or implemented. Most generate some level of controversy and almost all of them, with some important exceptions, prove difficult to implement with regard to provisions that are either politically controversial or require a long time and large sums of money. That, however, is no reason for accepting the slow pace of implementation of the CHT process. In fact, some of the unimplemented provisions are neither controversial, nor require much money or time. Like many other Accords, the CHT Accord too has many shortcomings, but since political processes are always ongoing, one may hope that its shortcomings may be corrected in the future, through visionary and dynamic politics. However, until such a conducive atmosphere presents itself, the most important priority for the CHT people is to have the Accord implemented, especially its provisions on rehabilitation, self-government, land, demilitarization, development and law and order.

According to the 1997 Accord, it is the responsibility of the *Accord Implementation Committee* to monitor the implementation of the Accord. However, at present, there is no such committee. The present government does not seem to be interested in reconstituting this committee. The JSS on its part has not made any strong demands for its reconstitution either, perhaps because its memories of the earlier committee and its inaction are not very positive. During the rule of the previous government, this committee had actually met only a few times, despite requests from the JSS to have more frequent meetings. The committee had a 2-1 majority in favour of the government, and was therefore potentially weighted against the JSS, although it did include the president of the party as one of its three members. In

the circumstances, it is difficult to gauge the potential value of this committee in helping implement the Accord. Nevertheless, in the absence of other monitoring mechanisms, it is better than nothing. At the very least, the JSS member could keep the government on its toes.

However, until such time as this Committee is reconstituted, the pressure on the government to continue implementation will be rather weak. It is therefore understandable why the leader of the JSS has appealed for third party mediation. However, the Government of Bangladesh must first agree to that. Only then can we start thinking of identifying the third party or parties. The government may not easily agree to any overt mediation, given past trends. Perhaps one of the few ways to bring about a fuller and more faithful implementation of the Accord would be through the persuasive leverage of the Government of Bangladesh's development partners.⁵⁷ Money talks the loudest. Some of the donors and lenders have spoken out previously in favour of implementation, but not very consistently, nor very loudly, nor in concert. It is unlikely that they will act in concert. But since they have a strong say in the development process of the country, they need to be lobbied very hard, as do the national politicians and civil servants. Care, however, must be taken that such a process does not have the effect of serving the interest of the donors and lenders at the *expense* of the interests of the two primary parties. Similarly, it needs to be emphasized to the national political and bureaucratic leaders that the implementation of the Accord will benefit the whole country and not just the indigenous people of the region.

Therefore, the strongest emphasis needs to be given by CHT activists to lobbying. Of course, it is no mean job for a war-ravaged society that has little access to education, healthcare, markets, and state welfare services that are taken for granted in other parts of the country. The CHT people, however, have no choice. They have a centuries-old tradition of resisting colonialism, racism and discrimination to draw inspiration from, but they must learn to be united again, and to struggle for their rights in new ways, alongside friends, both new and old.

Protecting and Promoting Human Rights and Respecting Self Determination

No matter how we see the CHT peace process and the crisis over the implementation of the 1997 Accord, we need to realise that ultimately, this process cannot sustain itself in a just and equitable manner unless and until the basic human rights of the people of the CHT are respected, adhered to and actively promoted. This is necessary to ensure a better quality of life for the people concerned, to ensure that they have access to equal opportunity, and to strengthen their capacities to enable them to effectively lobby for a fuller implementation of the Accord. This requires mobilization and sensitization, something that is ideally suited for "civil society", which is open to people of different ethnic, religious, political and class backgrounds. This may be difficult to realize in the short run, but there are no alternatives.

One of the most important of human rights is the collective right of peoples to self-determination, a right by virtue of which they "freely determine their political status and freely pursue their economic, social and cultural development".⁵⁸ It is the denial of this basic right, including the right to self-rule and autonomy that had led the CHT peoples to take up arms in the first place. The right of self-determination of a people may or may not include a right to form an independent state, depending on various factors, including the particular historical circumstances of the case. There is no doubt, however, that it does include the right of self-rule and self-government. The CHT always had a wholly or partly autonomous status in law and in practice, from the colonial period until today. The people of the CHT have therefore time and again

invoked their historical right of self-determination and have on many instances also declared their desire to exercise this right peacefully, and within the context of the state system of Bangladesh (Other peoples may of course decide differently, in accordance with their historical and political circumstances.) The clearest expression of this was made in the four-point demands of 1972.⁵⁹

In the formative post-independent years of the 1970s, the Government of Bangladesh could have easily accommodated the autonomy demands of the CHT people, as it did, at least partially, in 1997. History would thereby have been spared the unnecessary violence and the gross human rights violations that plagued the region over the last few decades. Instead, the government chose to deny the legitimate self-determination right of the CHT peoples on the plea of protecting the “sovereignty” and “territorial integrity” of the state against “secessionism” and “separatism”. These were excuses and not acceptable justifications behind the denial of the CHT peoples’ rights. The demands of the CHT peoples in 1972 for autonomy and constitutional status for the CHT clearly reflected an aspiration not to “secede” or to “separate”, but to integrate into the Bangladeshi state system, in a respectful manner, and by retaining their distinct cultural identities and their integrity, as peoples.

The aforesaid denial of rights shows the failure of the largely static Bangladeshi state, as with many other nation states, to keep up with its dynamic and forward-looking citizenry. It is this lack of vision on the part of the political and bureaucratic leaders of the country that has led to the current impasse in the CHT, with its legacy of misplaced violence against legitimate assertions of cultural identity and self-rule. These things happen in other parts of the world as well. Given the widespread presence of intra-state political violence worldwide, it is high time that today’s nation states, including Bangladesh, took a closer and less paranoid look at self-determination in its true essence. This would decrease violence and foster development. In fact, many international human rights scholars have been urging states to be more receptive towards their peoples’ right of self-determination, for the sake not just of peace and justice, but also to strengthen the stability and integrity of their polities.⁶⁰ Let me end here with a quote from the present *UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples*, Rodolfo Stavenhagen, who wrote the following on the right of self-determination:

“The problem of identifying self-determination exclusively with secession, as I see it, not only its limited scope but also that it is essentially a state-centred rather than a people-centred approach. There is a contradiction here, because we see self-determination as a right of peoples, but secession as a process relating to states. (Stavenhagen, 1996:4)

“The link between self-determination and democracy must be strengthened in theory and in practice. The violence we see around us is not generated by the drive for self-determination, but by its denial. The denial of self-determination, not its pursuit, is what leads to upheavals and conflicts. And the denial of self-determination is essentially incompatible with true democracy. “ (Stavenhagen, 1996: 8)

Notes

¹ This essay is adapted from two papers and a talk of this writer on the CHT Accord of 1997. One of these papers is *The Discordant Accord: Challenges to the peace process in the Chittagong Hill Tracts, Bangladesh*, that was presented at an “Expert meeting on ensuring full implementation of intrastate peace agreements involving self-rule arrangements as a contribution to peace consolidation and conflict prevention & the role of third parties therein”, organized by “Kreddha: International Peace Council for States, Peoples and Minorities” and the “Centre UNESCO de Catalunya” held in Sitges/Barcelona, on 8-14 May, 2003. The other paper was entitled *The Chittagong Hill Tracts “Peace Accord”: Whose Peace?* and presented at the workshop on “Dimensions, Dynamics and Transformation of Resource Conflicts between Indigenous Peoples and Settlers in Frontier Regions of South and Southeast Asia,” held in Mont-Soleil, Canton of Berne, Switzerland, on 25-29 September, 2002. The earlier talk on *The Chittagong Hill Tracts Accords: Looking Ahead* was given at a “Workshop on Sources of Conflict in South Asia: Ethnicity, Refugees, Environment”, organized by the Regional Centre for Strategic Studies (Sri Lanka), at Godavari, Nepal in March, 1988. The talk was basically oriented around a textual analysis of the Accord. The later papers went beyond a textual approach. Many sections of the two papers are identical. However, while the Mt Soleil paper had a strong focus on the question of peace consolidation, the Sitges paper had a higher focus on the implementation aspects of the Accord, its aftermath, and the negotiations preceding the signing of the Accord. This article is almost identical to the Sitges paper.

² The *Chakma Chief* or *Chakma Raja*, is a formally recognized traditional office that involves the administration of land, revenue and “tribal” justice in the Chittagong Hill Tracts (CHT), Bangladesh. The author also acts as an adviser to the district administrations and district councils of Rangamati and Khagrachari districts, and the Ministry of CHT Affairs. He is also a barrister, and enrolled as an advocate in the Supreme Court of Bangladesh in Dhaka. He was invited to facilitate during the final stages of the formal talks between the indigenous people’s party, the JSS, and the Government of Bangladesh, that led to the signing of a peace accord on 2 December, 1997.

³ Although there is no doubt that the question of autonomy forms one of the most crucial parts of the 1997 Accord, the word itself has been studiously avoided in the document. This is due to the reluctance of the government negotiators to use the word, based perhaps on the absence of any formalized provisions on “autonomy” in the national constitution and other laws.

⁴ See, for example, Nunthera, 2002.

⁵ It is well to remember that the indigenous population of the CHT is not a homogenous entity. It is made up of communities of eleven distinct peoples with their own languages, culture and heritage. Although the hill district councils are to include representatives of all the peoples of the region, there have been complaints of discrimination against the indigenous groups with small populations, both by the majority Bengali people and by the indigenous groups with the larger populations (e.g., *Chakma* and *Marma*). The laws refer to the CHT peoples as “indigenous”, “hillmen”, or “tribes” in different instruments, but the latter expression is the most favoured by government leaders and functionaries. The JSS uses the generic term “Jumma” (from the common swidden or jum cultivation heritage of all the CHT peoples) to refer to the indigenous peoples and the indigenous population of the region.

⁶ For a recent incident of organized violence and arson against indigenous people by Bengali settlers in the CHT, see the *Prathom Alo*, Dhaka, of 21 April, 2003.

⁷ J. B. Larma was also a member of the (three-member) *CHT Accord Implementation Committee*. The other two members of the committee were D. Talukdar, then MP and head of the *CHT Task Force on Refugees* (member) and A. H. Abdulla, former Chief Whip (convenor). This committee is no longer functional with the change in government after the elections in 2001. The present government has not reconstituted this committee.

⁸ Jyotirindra Bodhipriyo Larma, *The CHT and its Solution*, paper presented at the “Regional Training Program to Enhance the Conflict Prevention and Peace-Building Capacities of Indigenous Peoples’ Representatives of the Asia-Pacific” organized by the *United Nations Institute for Training and Research (UNITAR)* at Chiang Mai, Thailand on 7-12 April, 2003.

⁹ The main demands were: (i) Regional autonomy for the CHT with its own legislature; (ii) Retention of the CHT Regulation of 1900; (iii) Continuation of the tribal chiefs offices; and (iv) Constitutional safeguards against arbitrary amendment of the CHT laws (Burger and Whitaker, 1984: 22).

¹⁰ The other two legislators from the CHT who were however absent from parliament then were Raja Tridiv Roy, Member of the National Assembly of Pakistan from the CHT single seat, and Aung Shwe Prue Chowdhury, Member of the Provincial Assembly of East Pakistan from the CHT South seat (Larma was elected from the northern CHT provincial seat). Chowdhury (now the Bohmong Chief) was then in prison under charges of collaboration with the Pakistani regime while Roy was then in Pakistan, having joined the Pakistani cabinet under President/Prime Minister Z. A. Bhutto (Roy still holds the office of Ambassador-at-Large for the Government of Pakistan with the rank and status of a federal minister). As with many other Pro-Peking leftist politicians of the time, Larma’s sympathies are known to have been on the side of the independence movement, but he refrained from or was prevented from playing an active role for the liberation/independence movement.

¹¹ See Bhaumik et al, 1997 and Gain, 2000 for a number of articles by CHT people and others, on the pre-Accord and post-Accord situation, respectively, of human rights, development and cultural issues. For land issues, see Roy, R. C. K., 2000 and Roy, 1997 and Roy, 2000b. For the nature of the pro-Accord and anti-Accord conflict, see CHT Commission Update 4 (2000).

¹² The committee consisted of Abul Hasnat Abdulla, MP, Chief Whip of the Government (convenor), J. B. Larma, President of JSS (member) and Dipankar Talukdar, MP and Chairman of the *CHT Task Force on Refugees and Displaced People* (member).

¹³ The Awami League – now ideologically somewhat “centrist” - was the party that led the country to independence from Pakistan through a war of independence in 1971. The party espouses the cause of “Bengali nationalism”, which although secular in

orientation, nevertheless excludes the non-Bengali-speaking indigenous people by definition. It framed the first national constitution that rejected the demands of the CHT people for recognition of their cultural identity, for the adoption of a multicultural concept of nationality and for the recognition of the special administrative status of the CHT. Ironically, it was the Awami League government that signed the 1997 Accord. The more right-of-centre BNP rejects Bengali nationalism in favour of "Bangladeshi nationalism", which is ostensibly more inclusive towards non-Bengalis, most non-Muslims and indigenous people do not feel comfortable about its implied emphasis on the Muslim aspects of Bangladeshi identity and upon a Muslim-oriented rather than a secular perspective of Bangladeshi history.

¹⁴ Proshit Bikash Khisa, UPDF leader, in interview published in *Earth Touch*, No. 4, March 1998, SEHD, Dhaka pp. 10, 11.

¹⁵ Conversely, Indian sources have accused the Bangladesh government of sheltering and aiding anti-Indian separatist guerrillas from Northeast India. See, for example, Bhaumik, 1996 and Hazarika, 1994.

¹⁶ The UPDF claims that the JSS, by signing the accord and failing to remove the Bengali settlers from the region has effectively legalized the permanent residence of the settlers. Conversely, the JSS has claimed that the UPDF has legitimized the presence of the settlers by participating in an election that includes the "non-permanent-resident" settlers as voters.

¹⁷ At least two senior members of the present cabinet have expressed reservations about the CHT Accord because of its alleged discrimination against Bengali people. Very recently, on 11 March, 2003 in an address in parliament, Prime Minister Khaleda Zia condemned the previous Awami League government for having signed an unconstitutional accord. For opposition criticisms of her speech, see the *Pratham Alo* of 13 April, 2003 (page 13).

¹⁸ See, for example, Peace Campaign Group, 2002.

¹⁹ As of March, 2002 only 35 of the estimated 520 (temporary) military camps are reported to have been dismantled (IWGIA, 2002: 318). However, writing in April, 2003, Larma (op. cit: "The CHT Issue and its Solution") has referred to the removal of only 31 camps.

²⁰ During the rule of the Awami League, both the posts of the CHT Affairs minister and the chairperson of the CHT Development Board were held by indigenous MPs. Now these posts are held, respectively by the Prime Minister herself (while an indigenous MP holds the *deputy* ministership) and a Bengali MP from the northern hill district. This suggests a concession to Bengali lobbies that had continually protested against the indigenous primacy in holding high political positions within the CHT self-government system.

²¹ In the case of the former, the JSS claims that "non-tribal permanent residents" (those who "permanently reside at a specified address, and legally own land, within a hill district") are not eligible to vote in parliamentary elections. The government says that this clause applies for elections to the regional and district councils, but not to parliamentary elections. In the case of the internally displaced people (IDPs), the JSS claims that only indigenous people fall within this category within the meaning of the Accord, while the previous head of the *Task Force on Refugees and Displaced People* clearly thought otherwise when he compiled a list of 90,208 "tribal" and 38,156 "non-tribal" IDP families (See *Indigenous World, 1999-2000: 290-291* and *Indigenous World, 2000-2001: 292-293*). Representatives of the JSS and the refugees had boycotted the meetings of this Task Force. The previous chair of the Task Force resigned from the post before contesting parliamentary polls of 2001 (which he lost), and the present government has not filled the vacancy. Since there are no provisions for arbitration of disputes between the parties to the accord, only a court ruling could clarify the above dispute.

²² See for example, Morris Te Whiti Love, *The Settlement of Treaty of Waitangi Claims between the Crown and Marori Groups in Aotearoa/New Zealand*, paper presented at the aforesaid meeting in Sitges, on 8-14 May, 2003.

²³ Peace Campaign Group, 2000 (at pp. 6, 7) paraphrases the alleged explanation of the government representatives to the JSS representatives on the justification behind the government's non-inclusion of settler repatriation matter as a written provision in the 1997 Accord with the following words: "The domestic constituency does not allow the simple majority Awami League Government to openly address the issue in the agreement ... because once the issue is addressed in the agreement, the opposition parties, particularly the Bangladesh Nationalist Party (BNP), [which is] opposing the Government's deal with the [JSS], will come out in the streets with mass agitation that can even raise the question of survival of the government in power. In that situation, the possibility of an agreement between the two sides will be jeopardised. Of course, the Government understands and supports the concern of the [JSS] over the issue and can include some provisions in the agreement for the gradual removal of the settlers from the CHT."

²⁴ "Budget Line B7-3010" of the European Parliament earmarked certain funds for the "repatriation of Bengali settlers in the Chittagong Hill Tracts back to the plains". See European Alliance with Indigenous Peoples (EAIP), Newsletter, Issue 3, December 1996, p.3.

²⁵ For example, the *Rangamati Land Declaration*, adopted at a seminar on "Land Laws, Land Management and the Land Commission in the Chittagong Hill Tracts" organized by the *Committee for the Protection of Forest and Land Rights in the CHT* in Rangamati, CHT on 7 June, 2002 demanded that similar rations be provided to all inhabitants of the CHT.

²⁶ Interview with government official who wishes to remain anonymous, September 2002.

²⁷ It is important to note, however, that the BNP itself had conducted peace negotiations with the JSS during their earlier tenure in government.

²⁸ *Pratham Alo, Dhaka, 21 April, 2002*. However, the Prime Minister's Khaleda Zia's March 2003 address in parliament suggests a dilution of her previous expression of cooperation (see footnote 17 ante).

²⁹ Author's interview with representatives of a few Western European governments in Dhaka (who wish to remain anonymous) in June-September, 2002.

³⁰ See *Prathom Alo*, Dhaka, of 10 September, 2002.

³¹ This phrase has been borrowed from Ahmed, et al, 2002.

³² The Mizoram Accord is constitutionally protected by a "double entrenchment" clause, which safeguards against changes other than through an amendment to the Indian Constitution (requiring a specific majority in parliament) and without the consent of the Mizoram State Assembly (See Nunthera, 2002). . In the case of the South Tyrolean autonomy, it is protected by a bilateral treaty between Italy and Austria (see Woelk, 2003).

³³ In interviews to this writer from 1998 to 2002, many CHT people (who wish to remain anonymous) have said that the thrust of the development programmes were too long-term and hence did not produce "quick impact" results. Especially ignored were needs on language, literature, music, etc., which are felt to be "threatened", and are central to the cultural identity and integrity of the people concerned.

³⁴ This is the common opinion of many people in the CHT as expressed in various public meetings, development and human rights related workshops.

³⁵ Apart from Darby and Mac Ginty (who edited the research finding publication. "The Management of Peace Processes), the other researchers were Pierre du Toit, Tamar Hermann, David Newman, Ludger Mees and Paikiasothy Saravanamuttu. The other factors besides the economy were violence, progress towards a political settlement, external actors, public opinion and symbols.

³⁶ Unfortunately it is difficult to describe many "post-Accord" situations as "post-conflict" situations, since peace consolidation in such societies has either failed or has been only partly successful. These may include, besides the CHT, Tripura State and Bodoland in Northeast India and Mindanao in Philippines.

³⁷ Prior to the recent meeting of the *Bangladesh Development Forum* (informally known as the "Aid Club") in Dhaka that met to decide on annual allocations of loans and aid to *Bangladesh*, the *Bangladesh Adivasi Forum*, led by JSS leader, J. B. Larma, drew attention in the press to the non-implementation of the Accord (see Dhaka dailies of 9 and 10 May, 2003). Last year, when the Forum met in Paris, Bangladeshi demonstrators petitioned the donors and lenders to speak in favour of implementation, but did not campaign against aid to Bangladesh (see Peace Campaign Group, 2001).

³⁸ Although the UPDF is known to have serious misgivings about the process of negotiations as undemocratic and non-inclusive, and the contents of the 1997 Accord as being too weak on autonomy, it has recently expressed support towards the implementation of those provisions of the Accord that seek to safeguard the indigenous peoples' rights. This does not, however, imply any change in their rejection of the 1997 Accord in its totality.

³⁹ Formal meetings between the JSS and the Government of Bangladesh were facilitated by one or more members of a "liaison committee" consisting of people trusted by the JSS (one Bengali and the rest, indigenous). However, these mediators' role started and ended with getting the two sides to the negotiating table. The signing of the 1997 Accord without external third-party mediation was boisterously capitalized upon as a "unique Bangladeshi achievement" by the previous Awami League Government of Bangladesh.

⁴⁰ This was an opinion mentioned in the aforesaid Sitges meeting that went unchallenged.

⁴¹ Ibid.

⁴² Summary of the discussions of the first three days as prepared by Michael van Walt, one of the co-organisers of the "Expert meeting on Ensuring full implementation of intrastate peace agreements involving self-rule arrangements as a contribution to peace consolidation and conflict prevention & the role of third parties therein", organized by "Kreddha: International Peace Council for States, Peoples and Minorities" and the "Centre UNESCO de Catalunya" held in Sitges/Barcelona, on 8-14 May, 2003. This writer was one of the participants at the workshop, that included peace negotiators with experience in Sri Lanka and Bougainville, members of autonooopus and national parliaments, and academics. It is hereby reiterated that the above summary is a draft only, as was given to this writer and other participants before the preparation of the final proceedings.

⁴³ Although it is not confirmed, the CHT is believed to have some of the largest gas reserves in the country. The same could be true for oil.

⁴⁴ The number of people killed in recent years due to the pro and anti-Accord violence is estimated to have exceeded the number of violent deaths at certain periods prior to the ceasefire of 1992. Can we then say that the CHT is now less peaceful than during the period of the guerrilla-security forces conflict?

⁴⁵ This is the view of some of the indigenous peoples with small populations, including the Tanchangya, as articulately expressed by Sudatta Bikash Tanchangya, the Member-Secretary of the *Bangladesh Tanchangya Welfare Association*.

⁴⁶ These include the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, both of which have been ratified by Bangladesh. See also the draft *UN Declaration on the Rights of Indigenous Peoples*, the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960) and the *Declaration on Friendly Relations between States* (1970).

⁴⁷ On the side of the indigenous people, the situation is fraught with many uncertainties, especially in the light of the fact that one of three members of parliament from the CHT is a non-indigenous person, and the non-indigenous electorate is growing faster than the indigenous voters are.

⁴⁸ For a CHT law that was struck down as “unconstitutional” after the region lost its special constitutional status in 1964, see *Mustafa Ansari vs. Deputy Commissioner, Chittagong Hill Tracts and Another*, 17 DLR, 1965: 553. See also Roy, 2000 and Mohsin, 1997: 57-66.

⁴⁹ Writ Petition No. 4113 of 1999 (*Shamsuddin Ahmed v Government of Bangladesh and Others*) and Writ Petition No. 2669 of 2000 (*Mohammed Badiuzzaman v Government of Bangladesh and Others*) in the Supreme Court of Bangladesh (High Court Division).

⁵⁰ Such a desire for peace on the part of rural indigenous people in the CHT was poignantly brought forth in a recent documentary film on the CHT called “Demanding Justice”, directed by Mette Sejsbo and produced by Anders Dencker Christensen, Dansk AV Produktion Rentemestervej 2, 2400 Copenhagen NV, Denmark (+ 45 35 82 90 16. adc@davp.dk).

⁵¹ Indigenous people still do not visit the largest marketplace in the hill region – the *Reserve Bazar* – on market day as a sign of protest against (alleged) oppression by Bengali shopkeepers and day labourers. This has continued for more than two years now.

⁵² On 19 April, a number of indigenous people’s houses in Khagrachari town in the CHT were razed to the ground by Bengali settlers. Those guilty are not known to have been apprehended or prosecuted (see Prathom Alo, Dhaka, of 21 April, 2003).

⁵³ *Ethnic Groups in Conflict*, Berkeley, University of California Press, 1985. .

⁵⁴ *Conflict Resolution in Divided Societies*, Cambridge: Harvard University, Centre for International Affairs, Occasional papers in International Affairs. The writer regrets that he does not have access to the full reference.

⁵⁵ See for example, Singh, 1999 and Luithui & Preston, 1999.

⁵⁶ Paragraph 4(3), Mizoram Accord, 1986 provides: [Notwithstanding] anything contained in the Constitution, no Act of parliament in respect of (i) religious or social practices of the Mizos; (ii) Mizo customary law or procedure; (iii) administration of civil and criminal justice, involving decisions according to Mizo customary law, (iv) ownership and transfer of land, shall apply to the State of Mizoram unless the Legislative Assembly of Mizoram by a resolution so decides. Mizoram also stands out as the only Indian state with an overwhelming indigenous majority and a very high literacy, suggesting a positive co-relation between social development and the controlled in-migration.

⁵⁷ These include the World Bank, IMF, Asian Development Bank, Japan, US, the Nordic countries and other OECD nations including Australia, Canada, UK, Netherlands, France, Germany and Switzerland. Since a large part of Bangladesh’s annual budget is supported or subsidized by these lenders and donors, the latter, as a whole, have considerable influence on Bangladeshi affairs.

⁵⁸ Common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which have been ratified by Bangladesh.

⁵⁹ See footnote 9, ante.

⁶⁰ See for example, Daes, 1996 and Hannum, 1996.

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