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International Law and Ethnic Conflicts in a World of Multi-Nation States: The Case of Chittagong Hill Tracts (CHT), Bangladesh

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Abstract
This chapter is about international law incompatibility with ethnic conflicts. It stands against conventional wisdom by asserting that individualist international law is not a competent device to address the group phenomena of ethnic conflicts. The premise of this paper is that international law in its present form is not capable of responding to ethnic conflicts effectively. This position is based on four apparently independent arguments which taken together demonstrate compelling rationale for this assertion. First, international law does not generally recognize group rights. Second, liberal-individualism, the guiding philosophy of international law, cannot be effectively utilized for addressing group-needs and consequently, group-resentments. Third, ethnic conflict is a group phenomenon; therefore, it is the group that matters in ethnic conflicts. Finally, group-focused mechanisms such as consociationalism or ethnic federalism, which have been employed to demonstrably accommodate group claims and contain conflict potentials, are not, in fact, compatible with international law as they contradict a number of individualist human rights norms. Thus, taken together, these four arguments substantiate the thesis: on the one hand, there is no recognition of group rights in international law, and on the other hand, without recognizing group rights, international law has few means to prevent ethnic conflicts. This chapter explains this inherent drawback of international law vis-à-vis ethnic conflicts.

Key Words: International law, group rights, liberal-individualism, ethnic conflict, power-sharing, Chittagong Hill Tracts (CHT)

1. Prologue

As of 2001, there are 275 sizeable minority groups in the world that have been targets of discrimination or are organized for political assertiveness or both, and taken together these groups involve a sixth of the world's population. Of these politically active groups, 30 are in the Western democracies.[1] Some of these groups have already been engaged in violent conflicts. Ethnic conflicts in other parts of the world do not need any separate mention. How effectively does

international law respond to such grave and contemporary issues, which afflict both Northern and Southern Hemispheres? Although most of the issues involved in the process of ethnic conflicts somehow fall under the rubric of international law, does international law contain effective mechanisms to deal with these issues? And, are the existing practices for containing ethnic tensions in many plural societies are compatible with international law? This article deals with these research questions.

The premise of this chapter is that international law in its present form is not capable of responding to ethnic conflicts effectively. This position is based on four apparently independent arguments which taken together demonstrate compelling rationale for this assertion. First, international law does not generally recognize group rights. Second, liberal-individualism, the guiding philosophy of international law, cannot be effectively utilized for addressing group-needs and consequently, group-resentments. Third, ethnic conflict is a group phenomenon; therefore, it is the *group* that matters in ethnic conflicts. Finally, *group*-focused mechanisms such as consociationalism or ethnic federalism, which have been employed to demonstrably accommodate group claims and contain conflict potentials, are not, in fact, compatible with international law as they contradict a number of individualist human rights norms. Thus, taken together, these four arguments substantiate the thesis: on the one hand, there is no recognition of group rights in international law, and on the other hand, without recognizing group rights, international law has few means to prevent ethnic conflicts. The following sections explain this inherent drawback of international law vis-à-vis ethnic conflicts. The argument developed in this chapter has been substantiated with a case study on conflict-torn Chittagong Hill Tracts (CHT) region of Bangladesh.

2. Dispelling the Myth of 'Group Rights' in International Law

International law is no longer the monopoly of States. While States are still the primary sources, which Oppenheim called the 'normal subjects',[2] of international law, they are no longer the exclusive sources or subjects. Although the legal personality of individuals and various international organizations is recognized in contemporary international law, ethno-cultural groups as such are not currently conferred international legal personality. Rather, the notion of 'group rights' remains a myth within international law. Nonetheless, groups have enjoyed protection throughout history under international treaties and conventions; such protection can be grossly divided in the following phases:

A. Treatment of Groups in the Pre-War Phase

Among the first direct attempts at minority protection were measures to safeguard religious minorities. These first appeared in the 13th century and grew in importance as a result of the Reformation. One recent instrumental work by Goldsmith and Posner called such treaties 'symmetric cooperative human rights law', under which each State agreed to grant rights to minorities in its territory to protect its minority coethnics or coreligionists in another country.[3] Despite the existence of such treaties, it cannot be said that a general *system* or *mechanism* for protection of group rights existed at that time. Firstly, these treaties basically dealt with religious communities only, instead of adopting a generalized principle for the protection of minority groups; secondly, no effective system was developed to ensure implementation; thirdly, this protection was not guided by any norm; and finally, these treaties were rarely implemented. Therefore, no general recognition of 'group rights' existed or even took root at that time; instead, these treaties were special in character. They were *ad hoc* as well as given to frequent change with territorial borders.

B. Short-lived Regime of Hybrid Rights in the Inter-War Period

It is generally recognized that only in the aftermath of World War I that a *system* for the protection of minorities was established. A significant number of national minorities emerged as a result of the drastic redrawing of frontiers after the WW I, when new States were created or old ones enlarged. Hence the realization of the Wilsonian concept of self-determination was enormously complicated by the problem of national minorities in Central and Eastern Europe where States were multi-national and nations were multi-State. Therefore, a system for the protection of minority rights was felt necessary for the groups who did not qualify for the right of self-determination. President Wilson, in his second draft of the League of Nations' Covenant, inserted a provision requiring all 'new States' to accord to minorities the same treatment and security that is accorded to majorities.[4] In the third draft, the proposed Article was widened to include 'all States' seeking admission to the League.[5] However, this article, which could have opened a new era, failed to be adopted in the Covenant. According to Thornberry, "[t]he Wilson clauses were more than rules against discrimination […]. They included collective rights. As a general formula, this approach, interposing minorities as collectivities with special claims on the State, provoked general resistance."[6] Thus, instead of recognizing group rights as a general principle in the Covenant, the allied and associated powers preferred to conclude a series of minority treaties, applicable between contracting parties alone. In the face of Germany's exclusionary laws that outraged every standard the League attempted

to uphold, there was little that the League could do, except in Upper Silesia which was under minority protection. Dorothy V. Jones even questions the very intention of minority treaties, which in her opinion were formed to maintain political stability in Europe and not for the protection of minorities *per se*.[7] However, there is no doubt that this regime essentially opened up a potential avenue for further development of group rights, however, State-powers failed to pursue this opportunity. With that, the minority rights regime of the League remained a short-lived experiment.

C. Dominance of a New Philosophy in the Post- WW II Phase

Experience with the ambivalent nature of minority issues during the inter-war period made the whole project of minority rights questionable. The loyalty issue of minority groups towards their country of residence had been an issue of grave concern in the aftermath of the WWII, which compelled world leaders to think of minority rights in a different way. In fact, the concept of a human rights regime exclusively centred on the rights of the individuals, based on an individualistic approach common to western liberal philosophy, was widely accepted as a preferred means of addressing related issues. This approach has remained dominant since post-WWII. Joseph Kunz put this shift towards individualistic liberal idea of human rights in an interesting manner in 1954:

> He who dedicates his life to the study of international law in these troubled times is sometimes stuck by the appearance as if there were fashions in international law just as neckties. At the end of the First World War, "international protection of minorities" was the great fashion […]. Recently this fashion has become nearly obsolete. Today the well-dressed international lawyer wears "human rights."[8]

Throughout the entire regime of human rights under the UN, the idea of group rights has been carefully avoided. The UN Charter, for example, does not contain rights for groups. In theory this omission was addressed by the creation of the UN Sub-commission on Prevention of Discrimination and the Protection of Minorities - a subordinate body of the Commission on Human Rights. This action represents a compromised arrangement. It should be noted, the same approach was taken in the League Covenant. Although initially two Sub-commissions were proposed - one for the 'prevention of discrimination' and the other for the 'protection of minorities' - the Commission in 1947 decided to form one Sub-commission with the task of both prevention and protection.[9] However, due to the

member-States' lack of interest in the protection issue, the Sub-commission decided to focus on the prevention of discrimination.[10] In 1965, it was proposed that the name of the Sub-Commission should be changed to the 'Permanent Committee of Experts of the Commission on Human Rights.[11] In 1979 again, the Sub-Commission recommended that its name be changed to the Sub-Commission on Human Rights.[12] Apparently, there is a broad-based prejudice against the term 'minority'. Also, in the Universal Declaration of Human Rights, the principle of non-discrimination prevailed without any reference to group rights. In the drafting process of the Declaration, the Sub-commission proposed an article on minority rights which was vehemently opposed by the majority members in the Commission and the General Assembly.[13] US Representative Eleanor Roosevelt explicitly declared that there should be no minority provision in the Declaration, and opined that "the best solution of the problem of minorities was to encourage respect for human rights."[14] The General Assembly, consequently, adopted the UDHR without any provision for minority rights; instead, requested the Council to ask the Commission and the Sub-Commission to make a thorough study of the problems of minorities. Once again, the claim for group rights was compromised and compensated with a toothless measure.

The International Covenant on Civil and Political Rights followed the same path, although it recognized group identity very cautiously and in a limited way in Article 27.[15] The phrase 'in community with the other members of their groups' of the Article indicates a community requirement. To this extent, it can be perceived as recognition of group identity within the individualistic framework of the Covenant. However, it failed to be accepted as a general principle. The *travaux preparatoires* of the Covenant demonstrates the resistance of the member States to the insertion of group rights.[16] Therefore, in the final text, we find the 'persons belonging to such minorities', not the minorities themselves, as the subject of this right. This specific wording was utilized, as the minorities were not the subjects of international law.[17] Thornberry clearly describes this tension between individual and group rights in the Article: "The balance between 'minority rights' and 'individual rights' is an aspect of a larger question, but it is resolved in the Covenant in favour of individual rights. The minority's 'claim' on individuals, even in the case of a minority in difficulties of self-preservation, has only a secondary or subordinate importance."[18] Besides, this Article applies only to "those States in which ethnic, religious or linguistic minorities exist". [19] Throughout the drafting process, some representatives of States denied any applicability of this provision in their States since they did not have any minority; some representatives called it merely a 'standard'.[20] Therefore, Article 27 cannot be taken as a general principle of international law fairly because, according to

Thornberry, "it would be an odd claim that a State is somehow bound by a 'general principle of law' if it has consistently rejected that principle as one of customary international law."[21]

D. Subsequent Development

Certain subsequent instruments attempted to address group identity within the individualistic framework of international law. For example, the *UNESCO Declaration on Race and Racial Prejudice* (1978), the *UN Convention on the Elimination of All Forms of Racial Discrimination* (1965), and the *UN Declaration against Intolerance and Discrimination Based on Religion and Belief* (1981) provide group focused rights, especially in the form of affirmative action. While this change in attitude can be perceived as a pragmatic measure for addressing group needs, it cannot be taken, however, as a general recognition of group rights. Affirmative action presupposes the existence of groups, and this measure is available to persons because of their group affiliation. This understanding of affirmative action apparently stands against a liberal approach, and consequently, liberals have tended to justify this measure by calling it a transitory provision. Once all the citizens become equal, there will be no such special measures required for any group. This approach contains a profound error; the assumption that any given group wishes to maintain its culture on a temporary basis!

The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992) is a significant document in the post cold war phase, which recognizes the necessity of 'protection' of minorities. However, being a Declaration, this document has no binding effect on the signatory States. Moreover, taken as a whole, this Declaration did not go beyond the traditional liberal-individualistic approach of international human rights law. The very title of the Declaration indicates this fact. The legacy of the ICCPR is quite evident here. Similarly, the OSCE High Commissioner on National Minorities preferred the Framework Convention to the Protocol to the European Convention on Human Rights put forward by the Parliamentary Assembly. Pentassuglia comments that

> [t]he relevant OSCE work is not based on the notion of enforcing human and minority rights across the board in the name of democracy, but on the more ambiguous concept that *certain* situation must be contained in one way or another as they threaten to develop into armed conflict - somewhat a relay of the League of Nation's approach in 1920s.[22]

Despite these developments, the notion of group rights has yet to be generally recognized in international law. Additionally, as long as liberalism exclusively dominates the plane of international law, there will be no such recognition of group rights.

3. Liberal Shortcomings apropos Group Rights

With the emergence of liberal ideology as a dominant philosophy in the international arena, the idea of minority rights was widely perceived to be redundant. Rather, it was believed that liberal-individualism could effectively guarantee necessary protections for various minority groups, regardless of the basis for association; religious, linguistic, cultural or ethnic. The outbreak of ethnic resentment or even conflicts in Western democracies demonstrably indicates the fallacy of this proposition. Accordingly, some liberal theorists has revisited the entire concept of liberal-individualism in order to establish an accommodative framework to acknowledge that there are compelling interests related to culture and identity which are fully consistent with liberal principles of freedom and equality, and which justify granting special rights to minorities. Will Kymlicka's liberal culturalist position is a pertinent example.[23] His argument, in short, is that modern states invariably develop and consolidate a 'societal culture' [24] which requires the standardization and diffusion of a common language, and the creation and diffusion of common educational, political, and legal institutions. To ensure freedom and equality for all citizens involves, *inter alia*, ensuring that they have equal membership in, and access to, the opportunities made available by the societal culture. But in the case of national minorities, the case is quite different.[25] These groups already possessed a societal culture and they have fought to maintain these institutions. Freedom for them involves the ability to live and work in their own societal culture. In short, the aim of a liberal theory of minority rights is to define fair terms of integration for immigrants, and to enable national minorities to maintain themselves as distinct societies. However, Kymlicka's 'liberal' position has been dismantled by other liberals. Chandran Kukathas, for example, finds it unnecessary to accommodate any idea of group rights to address the issues of minority. To quote him: "We need, rather, to reassert the fundamental importance of individual liberty and individual rights and question the idea that cultural minorities have collective rights."[26] This proposition heavily depends on Kukathas's assumption that the basis of collective rights is the rights of individuals, which is again debatable. Another eminent liberal philosopher - Brian Barry - strikes at the very root of Kymlicka's 'liberal' understanding. He is critical of Kymlicka's emphasis on

'diversity' and 'autonomy', for they refer to policies that would systematically enfeeble precisely those rights of individuals to protection against groups that liberal States should guarantee. That the State does not lend any special weight to the norms of illiberal - or liberal - groups, is, according to him, the essence of what it means to say that a society is a liberal society.[27] And then he poses the relevant question: "How can a theory that would gut liberal principles be a form of liberalism?"[28] His expression is more candid when he says: "If liberal is not somebody who believes that liberalism is true (with or without inverted commas), what is a liberal?"[29] He consequently refuses to recognize Kymlicka as a liberal on the grounds that:

> A theory that has the implication that nationalities (whether they control a state or a sub-state polity) have a fundamental right to violate liberal principles is not a liberal theory of group rights. It is an *illiberal theory* with a bit of liberal hand-writing thrown in as an optional extra.[30]

Western democracies have a long standing practice of granting differentiated treatment for national minorities, but on the other hand, liberalism as a theory does not recognize this group phenomenon of rights. Kymlicka's theory, developed within a liberal framework, aimed to fill this gap between theory and practice. But at the end it was found incompatible with liberalism. This shortcoming of liberal philosophy as a matter of fact endorses Vernon Van Dyke's communitarian proposition that "liberalism needs supplementing".[31]

International law response to group rights is an archetypical illustration of liberal response to groups. For pragmatic reasons, of course, international law sometimes accommodates rights for groups without setting any general norm in favour of group rights in exactly the same way liberal democracies devolve rights to groups without recognizing the norm. Like liberal democracies, modern human rights law also accommodates affirmative action policies with clear assertion that these rights are temporary in nature and they shall not be continued after the objectives have been achieved.[32] If these policies are to truly protect a culture, then they must be permanent; but the problem is that, as of theory, it is not possible to accommodate such group-differentiated practice within liberal-individualism. When it comes to serious issues like ethnic conflicts where group identity, group rights, and group politics are the key factors, international law has a dearth of options available. Current international law scholars deal with significant matters in a piecemeal manner, addressing issues such as citizenship,

genocide, territorial claims, or self-determination in its narrowest forms. Thus, the key problem remains unaddressed.

4. Group Phenomenon of Ethnic Conflicts

International law does not generally recognize group rights, and as long as liberal-individualism remains its guiding philosophy, international law cannot accommodate group rights. This has been our central argument in the preceding sections. On the other hand, ethnic conflict develops primarily via three means; either group identity (in a primordial sense) or group interest (in an instrumental sense) or as a combination of both (in a constructive sense). Therefore, it is the *group* that matters in ethnic conflict. This group phenomenon of ethnic conflicts is evident in a number of instrumental and constructive theories of ethnic conflict. Caselli and Coleman's perception of ethnic conflict as a competition for economic resources is premised on the assumption that if the population is ethnically heterogeneous, coalitions can be formed along ethnic lines, and ethnic identity can therefore be used as a marker to recognize potential infiltrators to the winning coalition.[33] This premise essentially incorporates a race element. Similarly, Amy Chua gives an account of how globalization has created ethnic hatred in many parts of the non-Western world by creating a market dominant ethnic minority (through economic globalization) and empowering an impoverished majority (through the democratic process).[34] A *group* factor is demonstrably evident here. While such instrumental theories assume that ethnic conflicts are the creation of power-/resources-hungry elites, they do not answer why the followers follow. Horowitz deals with this issue plausibly with his 'theory of group entitlement' - that "[r]elative group worth and relative group legitimacy […] merge into a politics of ethnic entitlement".[35] Hence ethnic conflicts are the results of incompatible claims of group entitlements. The point to be noted here is that group worth and group legitimacy, the two key concepts of Horowitz's theory, have been put in relative terms. In other words, a group's worth and legitimacy is determined in relation to other group(s). Therefore, it is group comparison that marks group worth and group legitimacy. Ethnic conflict develops on these three group-centric concepts. Similarly, group factor is crucial in Harff and Gurr's framework for analysis of ethnopolitical mobilization and conflict:

> [A] people who strongly identify with their ethnic brethren and who live in an autocratic political system with low international economic status, one that has used discrimination and intermittent violence to repress its ethnic peoples, are the most

> likely to challenge their oppressors. The conflict potential is greatest if the group is cohesive and has traditional (autocratic) leaders who enjoy the widespread support of international organizations and actors.[36]

While the instrumental theory of Chua perceives ethnicity as a mobilization tool of demagogues, Milton Esman's theory explains ethnic conflicts as a phenomenon where both the instrumental and primordial issues become intermingled; thus he asserts: "[C]onflicts, whether waged peacefully or violently, reflect genuine and often incompatible demands of the contending parties."[37] With this understanding, Esman identifies three causes that precipitate ethnic conflicts, and here again, we can identify the group dynamics. The first such cause of ethnic conflict is perceived affronts to a community's honour or dignity; second, tangible threats to the vital interests of an ethnic community by another ethnic group or by a government; and the third precipitator is fresh opportunities to gain advantages or redress grievances to upset an unsatisfactory *status quo* that had previously been considered impervious to change.[38]

There is no exhaustive list of ethnic conflict theories, nor are all the theories that we have referred to here perfect. Our purpose was to underscore the fact that although various scholars with different backgrounds address the issue of ethnic conflicts from various perspectives, the *group* has been the key thrust of their theories. Ethnic conflicts are a group phenomenon and no individualist approach bypassing this group focus can effectively respond to such concerns. Therefore, in sharply divided societies, pragmatism inspired political actors have developed group-focused mechanisms like ethnic federalism or consociationalism to handle ethnic tensions. While this widespread practice of power-sharing is evident, is it compatible with international law? The following section examines this issue to once again highlight the inherent theoretical limitations of individualist international law when incorporating power-sharing tools to respond to group dynamics of ethnic conflicts.

5. International Law Compatibility with Power-sharing Arrangements

Power-sharing have offered a number of avenues for maintaining peace or at least containing conflict potentials in a number of plural societies. These mechanisms have their own limitations**,** yet in ethnically divided societies they constitute a more rational approach than majoritarian rule. Although the tendency of imperilling national unity has been a key criticism of these power-sharing methods, in many plural societies power-sharing has been instrumental in keeping already-divided groups together. Nigeria is an oft-cited case in this

context. Nevertheless, the widespread practice of power-sharing in plural societies is not always compatible with international law; in fact, a good number of international law scholars found these power-sharing mechanisms a flagrant violation of established universal legal norms. Wippman, for example, argues that in general, power-sharing mechanisms tend to favour collective rights over individual rights, as a result of which many of such practices appear discriminatory when viewed from a liberal individualist perspective.[39] From an individual rights standpoint, he identifies at least three specific human rights norms that are infringed by power-sharing practices:

> First, they explicitly differentiate among the members of groups on the basis of characteristics such as race, religion, and language rather than on neutral merit-based criteria. Second, ethnic power-sharing practices may dilute the political power of individuals who are not members of a protected ethnic group and thereby violate their participatory rights. Finally, at least some of the autonomy schemes […] would place restrictions on efforts by members of some ethnic groups to settle in areas controlled by members of another ethnic group, arguably in violation of the right to freedom of movement and residence.[40]

Where power-sharing devices are used to confer power on particular groups in excess of what is reasonably necessary to protect their interests and in ways that are designed to deny other groups meaningful participation in the governance of the State, it may be taken as a form of racism and violation of international human rights covenants. For example, under the 1990 Fijian Constitution, indigenous Fijians are guaranteed a working majority of seats in the legislature and primacy in the selection of the President and the Prime Minister. As a result, Fijians of Indian origin - the majority group - are permanently reduced to a secondary political status, along with other non-indigenous Fijians.[41] This Fijian arrangement is a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), for this clearly constitutes an ethnic or racial distinction that impairs the right of non-indigenous Fijians to exercise their right of political participation.[42] Moreover, it cannot qualify as a permissible special measure under the CERD as it leads to the maintenance of separate rights for different racial groups[43] Additionally, the Convention also requires that special measures be discontinued after the objectives for which they were taken have been achieved. Similarly, ethnic federalism, as a power-sharing tool, may be considered a violation of the

International Convention on the Suppression and Punishment of the Crime of Apartheid, which bans the segregation of groups based on race or ethnicity.[44] Moreover, the power-sharing aspects of consociationalism come in direct conflict with established norms incorporated in Article 21 of the Universal Declaration on Human Rights and Article 25 of the International Covenant on Civil and Political Rights mandating equal rights of political participation for all, which include the right to take part in the conduct of public affairs, the right to vote and to be elected at genuine periodic elections, and the right to have access to, on general terms of equality, to public service in the country. Consociational arrangements essentially violate these rights of the members of majority community by providing minority ethnic groups political power disproportionate to their number through reserved seats and offices, minority veto rights, or similar devices.[45] And finally, territory based autonomy for a particular ethnic group restricts the individual right of the rest of the residents to freedom of movement and residence stipulated in Article 12 (1) of the ICCPR. Similar provisions can also be found in Article 13 of the UDHR and Protocol No. 4, Article 2 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Henry Steiner deals with a broader aspect; autonomy for ethnic minorities, according to him, weakens the common humanity. "[E]xtreme manifestations of ethnic bonds will become the cardinal obstacle to a human rights consciousness, at least with respect to attitudes of members of the ethnic group toward the 'other'".[46]

Despite such violations of the aforesaid international human rights instruments from an individualist perspective, Wippman is of the opinion that from a group perspective, power-sharing arrangements like consociationalism or ethnic federalism are not *ipso facto* violations of established human rights norms, and they are compatible with international human rights law. He argues that consociational practices should be viewed not as creating separate or discriminatory rights for ethnic minorities but as enabling ethnic minorities to exercise their rights on a level as close to parity with dominant groups thereby ensuring the equality of groups.[47] However, he takes note of the limitations of group-oriented equality within an individualist framework of the ICCPR: "It might be possible to interpret general 'terms of equality' broadly enough to encompass political systems that focus on the equality of groups rather than of individuals, in keeping with present trends toward recognition of collective rights, but such an interpretation seems inconsistent with the predominantly individual rights focus of the Covenant itself."[48] Therefore, it would be particularly difficult to establish the compatibility of group focused power-sharing mechanisms with the liberal individualist international human rights regime. Mere existence of

power-sharing practices does not *ipso facto* provide legality to those practices - a fact which reiterates the gap between theory and practice in international law. In this connection, Wippman was right in ultimately developing his justifications for power-sharing from a "purely pragmatic standpoint,"[49] as evidenced by his concluding comment: "[Power-sharing practices] may compromise some human rights ideals, but they may also help avoid the even greater injustices associated with other possible solutions."[50] We rephrase his remark this way: power-sharing devices are the most viable means of addressing injustices towards ethnic minorities and thereby minimizing the potential for ethnic conflicts, but unfortunately these group focused mechanisms are inherently incompatible with established liberal individualist norms of international law.

6. Case Study on the Chittagong Hill Tracts, Bangladesh

The Chittagong Hill Tracts (CHT), the southeastern part of Bangladesh, with hills, cascades and woods, have added sublimity to the illustrious natural beauty of Bangladesh, and the indigenous ethnic minorities and their colourful way of life are at the heart of the beauties of the CHT. In the hills, it is not only the landscapes that are dramatically different from the plains, but the features of the original inhabitants are also strikingly different from the overwhelming majority of Bengali people. More or less, there are thirteen indigenous communities in the CHT (Rangamati, Bandarban and Khagrachari Hill Districts); they are: Chakma, Murma, Tangchangya, Tripura, Murang, Mrung, Bawm, Pangkhua, Lushai, Khumi, Khyang, Mru, and Sak.[51] However, the constitution of the People's Republic of Bangladesh does not recognize the existence of any other communities other than the dominant Bengali majority.

A. Indigenous Peoples – the Victims of the Nation Building Mission

Immediately after attaining independence, when the war-ravaged Bangladesh Government was preparing to adopt a constitution, a hill peoples' delegation led by Manobendra Narayan Larma called on Bangabandhu Sheikh Mujibur Rahman on February 15, 1972 demanding autonomy for the CHT with its own legislature. But this demand was utterly rejected; he rather insisted that there could be only 'one nation' in Bangladesh. Bangabandhu therefore reportedly asked the hill people to forget their separate identity and "become Bangalees".[52]

After the brutal assassination of Sheikh Mujibur Rahman on 15th August 1975, martial law was imposed all over Bangladesh; this was the crucial event in the history of Bangladesh. During the regime of the military ruler General Ziaur

Rahman, the CHT Development Board headed by military personnel was formed in 1976. The Board undertook a devastating programme of settlement of hundreds of thousands of poor Bangalee people in the CHT. From 1980 to 1984, as many as 400,000 Bangalees were made to settle in the CHT, and over 50,000 Chakmas are reported to have fled to the Indian state of Tripura.[53] In 1947 the Bangalee population in the CHT was 2.5 %. It rose to 10% in 1951 and 35% in 1981.[54] The Bangalee population became almost 50% in 1991. In the Bandarban and Khagrachari hill districts, Bangalees are in majority where they account for 53 % and 52% of the total population respectively.[55] This effort of forced assimilation is not limited to demographic calculations only; hill people are being suppressed culturally as well. Bangla, the state language of the country, is used as the only language in the schools in the CHT. In this nation building process, a number of indigenous languages are being wiped out. Massacre of indigenous people, burning of their houses, arbitrary arrests, torture, extra-judicial executions and 'disappearances' reportedly perpetrated by or with the connivance of the military and law enforcement agencies during the years of armed conflict depict the human rights situation in the region. In 1990, information from one refugee camp in India indicated that one in every ten of the total population had been a victim of rape in the CHT, and over 94% of the alleged cases of rape of the hill women were by security forces.[56] Arbitrary arrest and inhuman and degrading treatment of the hill people was a routine work during the period of insurgency. These were planned actions as a part of macro objective of nation building through forced assimilation and forced expulsion.

B. Decades of Insurgency and the CHT Peace Accord

Immediately following the independence of Bangladesh from autocratic rule of Pakistan in 1971, the CHT underwent militarization. On 7 March 1972 under the leadership of Manobendra Narayan Larma, the PCJSS (CHT United People's Party) was formed. The party also added a military wing, the SB (peace army), to it. To counter the moves of the SB, in the name of 'national security' government subsequently embarked upon the militarization of the CHT. The situation turned worse after the assassination of Bangabandhu Sheikh Mujib in August 1975 which was followed by two martial law regimes spread over 15 years. The CHT issue was identified as a 'national security' problem, and a large number of the Bangladesh army and police forces was deployed in the region to carry out extensive search and destroy operations.[57] The Bangladesh Air Force also carried out raids in northern and southern CHT.[58] During this period, the CHT was under direct and exclusive control of the army. The PCJSS was outlawed. Alarmed by the developments, Larma crossed over to India, and

subsequently the SB – the military wing – emerged as the main vanguard of the Hill People's cause. In other words, the CHT issue came to be addressed by both sides with a military approach.

The CHT provided the Bangladesh military with a sense of mission and purpose. The army's activities in the CHT were projected as nation-building endeavours, and were used to justify the rapid increases made in the Bangladesh Army both in terms of personnel and revenue receipts.[59] Apart from the militarization and total control of the CHT, the military has also committed gross violations of human rights in the region. Massacres, rape, forced religious conversion, religious persecution, forced eviction, arrests, torture, and kidnapping are some of the human rights violations by military personnel. Since 1980 there have been eleven major instances of massacre of the hill people by Bengali settlers and security personnel in which around 2000 hill men died.[60]

Meanwhile the PCJSS through its ideological and organizational framework undertook to organize the hill people on a nationalistic agenda. The persecution in the CHT led to the demand by the PCJSS for a separate nationhood for the hill people. This party, formed in the wake of Sheikh Mujib's refusal in 1972 to recognize the hill people as a community distinct from Bengalis, had since the mid 1980s been referring to the hill people as the 'Jumma nation'.[61] The party's nationalistic agenda has been explicitly spelt out in its manifesto, where it states that the party's main objective is to achieve the right of self-determination of the various small nationalities in the CHT with a separate entity status of the CHT with a constitutional guarantee. It recognises that the CHT is the homeland of various multi-lingual nationalities, who together have been referred to as the Jumma people. Mohsin explained the elements of Jumma nationalism: first, the word 'Jumma' has its origin in jhum, which has been the traditional mode of cultivation of the hill people. It was used pejoratively by Bengalis to denote the hill people as primitive and backward farmers. But for the hill people jhum constituted not only a mode of cultivation but also a way of life. It was integral to their religious, social and cultural ethos. The PCJSS therefore has invoked this particular nomenclature to infuse to the hill people with a sense of pride in their past, their traditional system and values which have been the objects of repeated onslaughts by outsiders. This nostalgia for the past, on the one hand creates images of 'outsiders' and 'insiders' among the hill people, and on the other provides them with a sense of community and unity. Second, jhum also denotes the special relationship of the hill people to their land. It introduces a territorial dimension in this construction which assumes that the CHT had traditionally been the land of the hill people and need to be protected from outsiders. Third, an important element of Jumma nationalism is its emphasis on the separateness or

distinctiveness of the hill people from Bengalis. In this context, according to the PCJSS, jhum denotes the economic separateness of the hill people from the plain land Bengalis. Fourth, the PCJSS also emphasises and highlights the cultural separateness of the hill people from Bengalis. In linguistic terms they emphasise that Bengali is not their mother tongue. In religious terms they stress that Islam is not their religion. Finally, the PCJSS maintains that the shared experiences of deprivation and exploitation and the recent struggle of the hill people against Bengalis have created awareness among the hill people that they share a unique historical past. This has instilled in them a common bondage and feeling of oneness.[62] Accordingly, with a view to realising Jumma nationalism by way of autonomy for the hill people, during the period of insurgency the PCJSS set out a number of demands: i) the Constitution of Bangladesh shall recognise the CHT as a special administrative unit, with regional autonomy. The three districts of the CHT shall be merged into one unit, and the region shall be renamed Jummaland; ii) Jummaland shall be administered by an autonomous Regional Council, which shall be elected directly by the people on the basis of adult franchise. The Council shall be responsible for 30 subjects including, *inter alia*, general administration, law and order, police, land, education, forestry, local government institutions, and cultural affairs; iii) all lands in the CHT, except some important government establishment, shall be placed under the jurisdiction of the Council. A constitutional ban ought to be put on the purchase of land in the CHT by 'outsiders'. Deeds made to lease out land to Bengalis for rubber plantation and forestry shall be cancelled and the lands shall be placed under the Council's jurisdiction. The Constitution must ban Bengali settlements in the region. All 'outsiders' who have settled in the area since 17 August 1947 shall be withdrawn from the region; iv) service rules shall be relaxed for the hill people. Special quotas shall be reserved in government civil services for the hill people; v) parliament seats of this constituency shall be reserved for the hill people only; vi) an autonomous indigenous Police Force constituting solely of the hill people shall be formed. Quotas should be reserved in the defence services for the hill people. The region shall be demilitarised; vii) a constitutional recognition shall be given to all the small nationalities of the area; and finally, viii) all international and internal Jumma refugees should be properly rehabilitated. Members of the SB and all individuals who have been implicated for association with the former should be properly rehabilitated.[63]

This power-sharing demand of the PCJSS as a whole was perceived as a threat to national security by military and conservative political elites. The political government in 1993 rejected the power-sharing demand by holding that

> Bangladesh is an integrated and homogenous society bound by common language and rich cultural heritage. […] Bangladesh is a unitary state with a democratic Constitution that extends to the entire territory without exception.[64]

This official stand perceives Bangladesh as a nation-state. By claiming Bangladesh a homogenous society, this position denies the existence of other cultural groups, and justifies various assimilative actions taken by successive governments. However, situation changed in 1997 with the re-emergence of another political party – Bangladesh Awami League – to power. This was the party that led the country during the liberation war in 1971,and historically, it had strong relationship with neighbouring India. During this time, the government took sincere efforts to bring an end to the insurgency by initiating dialogues with PCJSS. Government also sought cooperation from India who allegedly provided SB with arms and other supports during the whole period of the insurgency. In response, Indian government clearly indicated to the SB that it has to withdraw its bases from the Indian soil. This single fact considerably influenced PCJSS to soften its demand for regional autonomy; instead, during the negotiations with the government, it accepted the government position that the three hill districts of the CHT – Rangamati, Khagrachari, and Banderban – will form a regional council.[65] Following closed-door negotiations, the CHT Peace Accord between the National Committee on CHT Affairs formed by the Government of the People's Republic of Bangladesh and the PCJSS appeared on December 2, 1997. On behalf of the government, the Convenor of the National Committee Hasanat Abdullah and on behalf of the inhabitants of the CHT, the president of the PCJSS Bodhipriya Larma alias Shantu Larma signed the Accord.

The Peace Accord responded, though half-heartedly, to the issues of local governance, rehabilitation, land, and general amnesty. The Accord provides for three Hill District Councils, wherein only the permanent residents of the CHT will be members.[66] There is provision for a Regional Council in coordination with these District Councils. Chairman of this Council shall be elected indirectly by the elected members of the District Councils. The Regional Council shall be formed with 22 members of whom two-thirds will be elected from among the tribals. The Regional Council is given the responsibility of supervising and coordinating the subjects vested under the Hill District Councils. It is to be noted here that some major subjects like general administration and law and order, education, cultural affairs, information and statistics, population control and family planning that directly relate to autonomy and preserving indigenous culture were not vested under the Hill Districts. However, it was provided that the

government and elected representatives shall make efforts to maintain separate cultures and traditions of the tribals, and the government in order to develop the tribal cultural activities at the national level shall provide necessary patronisation and assistance. Regarding land issue, the Accord stipulates that no land within the boundaries of Hill District shall be given in settlement, purchased, sold and transferred, including giving lease without prior approval of the Council. Some government establishments are kept outside this restriction. The Accord also prohibits any acquisition and transfer of land within the boundaries of the Hill District by the government without consultation and consent of the Hill District Council. Provisions for rehabilitation, amnesty along with compensation were made in the Peace Accord.

However, to the dissatisfaction of the hill people, the Accord remained silent apropos their constitutional recognition. Instead, the term 'tribal' (the Bengali version of this word – Upajati – means sub-nation) was used to describe the indigenous peoples. The preamble categorically mentions that the parties of this Accord arrived on an agreement "under the framework of the constitution of Bangladesh". In this connection, the following sub-section examines the CHT Peace Accord in light of the Constitution and within the theoretical framework developed in the earlier sections of this article.

C. Compatibility of the CHT Peace Accord with the Constitution and International Human Rights Instruments

The constitution of Bangladesh, like any other liberal constitution, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth.[67] To address the *de facto* economic and social disparity, the Constitution permits affirmative actions "in favour of women or children or for the advancement of any backward section of citizens".[68] Special measures for indigenous peoples have been justified under this constitutional provision since the inception of Bangladesh by putting them under the rubric of 'backward section of citizens'. It would be pertinent to mention here that during British colonial rule also the special characteristics of life and nature of the hill people of the CHT were also protected. The 1900 Regulation formulated by the British rulers is still considered the principal instrument for protecting hill people's rights. However, in the unitary state of Bangladesh, the Constitution avoided any mention of indigenous people; instead, limited as well as insufficient affirmative measures were given validity by calling them a backward section of citizens. No doubt, centuries of systematic oppression and discrimination made hill people vulnerable, and economic affirmative action is badly needed to ameliorate their economic status. But perceiving them as backward in terms of culture and

tradition is nothing short of cultural hegemony by the dominant Bengali cultural group. Moreover, unlike economic issues, affirmative measures for protecting indigenous culture and tradition must be of permanent character which is not theoretically possible. Any such permanent discrimination, though positive and required, theoretically challenges the fundamental tenets of liberalism as we have seen in Section 3. Unless and until the very notion of 'equality' is redefined in the Constitution going beyond the liberal paradigm, no special measure for the protection and promotion of indigenous culture and tradition will be compatible with the Constitution. In this light, the Peace Accord is a deviation from liberal philosophy enshrined in the Constitution.

Besides, special arrangements to facilitate political participation of hill peoples by restricting a number of human rights of majority Bengalis contradict, among others, a number of international human rights instruments including Universal Declaration of Human Rights, International Covenant of Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination.[69]

Paradoxically, the legality of peace agreements under the constitution or international law is not usually the prime concern of various contending parties of conflicts. Often, such agreements are the products of grave pragmatic needs in the absence of any better option. The CHT Peace Accord of 1997 is not any exception here. In the face of insurgency and ensuing massive violation of human rights as well as various regional and international pressures on both the government and PCJSS, such a peace accord was a demand of time. The peace process appeared complicated when the then opposition party – a right-wing nationalist party – vehemently opposed any concessions in favour of the indigenous people, as that would go against the unitary spirit of Bangladeshi nationalism as well as the territorial integrity of the country. The party in power at that time also consistently emphasized the nation-state character of Bangladesh *ab initio*. Therefore, the CHT Peace Accord mainly concentrated on bringing an end to insurgency by devolving a few number of local governments, subject to newly established district and regional councils and rehabilitating the members of SB without addressing the root causes of the conflict. Yet right-wing political parties declared this accord unconstitutional and vowed to repeal it once they assumed power, which they actually did not – again for pragmatic reasons. On the other hand, a section of hill people too rejected the accord as a compromise and formed a political party – United Peoples Democratic Front (UPDF) – to carry on the struggle for the 'full autonomy' of the CHT.[70] Under such delicate circumstances, no substantive progress has been made in the implementation of the accord. In the meantime, taking the full advantage of absence of full-scale

insurgency, the Bengali army is now building necessary infrastructure to ensure access to remote places of the CHT and frequently conducting search operations for UPDF cadres.

Apropos implementation of the accord, parties have conflicting claims. While the government claims that 95 per cent of the accord has been implemented, the PCJSS claims the opposite.[71] The fact remains that at the administrative level the three district Councils have started functioning but no elections have been held to the councils, instead members and chairmen have been selected by the government from its own following. The government has not as yet framed the rules for the functioning of the Regional Council; consequently the RC remains ineffective.[72] Although the accord provided for the withdrawal of all temporary military camps (around 400) from the CHT, government maintains that 75 such camps have been withdrawn (PCJSS figure is 35).[73] Regarding land issues, a Land Commission that has been formed but the Commission has not started functioning yet. The PCJSS maintains that there was an unwritten understanding between the parties to the accord on the question of withdrawal of Bengali settlers from the CHT. The government on its part denies the existence of any unwritten agreement.[74] Although there is no longer a full-scale insurgency, violence against the hill people is still prevalent. On August 26, 2003 Bengali settlers of the Mohalchhari sub-district under the Hill District of Khagrachari rampaged through nine villages inhabited by indigenous people. This eight-hour long attack that claimed at least one life, took place in the presence of the army and policemen.[75] The hills people alleged that army and police stood by when the marauding gangs ransacked the villages.[76] When Bengalis were torching a house, a policeman is reported to have said: "hurry up! We don't have enough time."[77] More than 400 houses, two Buddhist temples and three shops were set ablaze by the mob, and nine indigenous women including a wife and two teenage daughters of a hill man were gang-raped by the Bengali attackers.[78] On September 2, 2003 the Daily Star News reported: "Ration stopped for indigenous CHT refugees: Hills people irked as free supply to Bengali settlers continue." The news report stated that the Prime Minister's Office (PMO) had directed the CHT Affairs Ministry to stop rations for the refugees. This attitude of a coalition government that earned more than two-thirds majority in the parliament unambiguously reveals that peace is far away from the CHT.

To sum up, the CHT Peace Accord was concluded to address the pragmatic need of resolving decades-long insurgency in the region. In doing so, the negotiators had to deviate from the liberal framework of the Bangladesh constitution on a number of issues, perhaps because they had no other viable alternative. This analogy is true for international law as well. The group focused

incentives, though insufficient, provided in the accord violate a number of individualist international human rights norms as we have already discussed in Section 5. And, this *prima facie* deviation from liberal principle is justified in the name of pragmatism. It demonstrates the impotence of existing municipal and international laws, drawn upon liberal orthodoxy, in dealing with ethnic conflicts. This case study substantiates this argument developed in preceding Sections.

7. Epilogue

Despite efforts on community, regional, state, and international levels, the world today continues to be a violent place. Hardly a day passes that is not marked with deaths of innocents in violent ethnic conflicts - be it in Sudan, Iraq, Ethiopia, Somalia, Indonesia, Sri Lanka, India, Lebanon et al. The world community has already experienced incredible tragedies both during large established wars, and numerous more small-scale conflicts. The worst forms of such ethnic conflicts in recent times may be found in Rwanda and former Yugoslavia. This paper exhibits that international law, in its present form, lacks the mechanisms necessary to address this vital threat to humanity through its individualism. Koshy, having the same realization, describes proceedings involving the Sri Lankan ethnic conflict before the Human Rights Commission and the Sub-Commission in which almost exclusive attention was given to violations of core individual rights rather than to the ethnic and political structures giving rise to the conflict as such or to the related claims of some Tamil groups for an autonomy scheme.[79] Similarly, Osaghae registers his distrust of an individualist system to manage ethnic conflicts in Nigeria.[80] This is true for other conflict situations as well. Thus, the case is well made that time has come to develop more accommodative devices to address this issue. This chapter provides the rationale for this proposed regime change.

In this sense, this chapter is a part of an ongoing process - a process which is expected to respond to real grievances of vulnerable groups in a more compassionate way going beyond the narrow scope of liberalism. Our contribution to this process, while humble, is made none-the-less with hope. Therefore, we do not draw any conclusion here; instead, we register our hope for a new beginning for a world where everyone will be afforded with equal dignity and honour for self-being as well as for each culture and tradition that gives proper meaning to humanity.

Notes

[1] B Harff and T R Gurr, *Ethnic Conflict in World Politics*, Westview Press, Oxford, 2004, p. 3–4.
[2] R Jennings and A Watts, eds., *Oppenheim's International Law*, 9th ed., vol. 1, Longman, London, 1996, p. 15.
[3] J L Goldsmith and E A Posner, *The Limits of International Law*, Oxford University Press, New York, 2005, p. 113.
[4] D H Miller, *The Drafting of the Covenant*, G P Putnam's Sons, New York, 1928. Quoted in Patrick Thornberry, *International Law and the Rights of Minorities*, Oxford University Press, New York, 1991, p. 38.
[5] ibid.
[6] Thornberry, p. 39.
[7] D V Jones, 'The League of Nations Experiment in International Protection'. *Ethics and International Affairs*, vol. 8, 1994, p. 88.
[8] J L Kunz, 'The Present Status of the International Law for the Protection of Minorities'. *American Journal of International Law*, vol. 48, 1954, p. 282.
[9] For details, *see* United Nations, UN Doc A/CONF.32/6, 1947, paras. 114–115.
[10] United Nations, UN Doc E/CN.4/711.
[11] United Nations, ECOSOC Official Records, 41st Session, Supp. No. 8, 1965, 119.
[12] United Nations, Sub-Commission on Human Rights Resolution 9A (XXXII), 1979, UN Doc E/CN.4/Sub.2/435.
[13] United Nations, UN Doc E/CN.4/21, Annex A, 23.
[14] ibid., p. 726.
[15] Article 27 reads: *In those States* in which ethnic, religious or linguistic minorities exist, *persons belonging to such minorities* shall not be denied the right, *in community with the other members of their group*, to enjoy their own culture, to profess and practice their religion, or to use their own language.
[16] United Nations, UN Doc E/CN.4/Sub.2/112.
[17] For the details of this argument, *see* Thornberry, *International Law and the Rights of Minorities*, 176.
[18] ibid., pp. 176–177.
[19] *See* Article 27.
[20] United Nations, UN Doc E/CN.4/Sub.2/112.
[21] Thornberry, p. 247.

[22] G Pentassuglia, 'Minority Rights and the Role of Law: Reflections on Themes of Discourse in Kymlicka's Approach to Ethnocultural Identity'. *Journal on Ethnopolitics and Minority Issues in Europe*, vol. 4, 2002.
[23] *See generally* W Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, Oxford University Press, Oxford, 2001, pp. 53–66.
[24] Societal culture is defined as a set of institutions, covering both public and private life, with a common language, which has historically developed over time on a given territory, which provides people with a wide range of choices about how to lead their lives.
[25] The term national minority is understood here by Kymlicka as groups who formed functioning societies on their historical homelands prior to being incorporated into a larger State.
[26] C Kukathas, 'Are There Any Cultural Rights?' in *Group Rights – Perspectives Since 1900*, J Stapleton (ed), Theommes Press, Bristol, 1995, p. 261.
[27] B Barry, *Culture and Equality*, Polity Press, Cambridge, 2001, p. 125.
[28] ibid.
[29] ibid., p. 132.
[30] ibid., p. 140.
[31] V Van Dyke, 'The Individuals, the State, and Ethnic Communities in Political Theory'. *World Politics*, vol. 29, no. 3, 1977, p. 344.
[32] *cf.* Articles 1 and 2 of the Convention on Racial Discrimination.
[33] F Caselli, and W J Coleman, 'On the Theory of Ethnic Conflict', Working Paper No. 12125, National Bureau of Economic Research (NBER), Massachusetts, March 2006.
[34] *See generally* A Chua, *World on Fire*, Anchor Books, New York, 2004.
[35] D L Horowitz, *Ethnic Groups in Conflict*, 2nd ed., University of California Press, Berkeley, 2000, p. 186.
[36] B Harff and T R Gurr, *Ethnic Conflict in World Politics*, Westview Press, Oxford, 2004, p. 113.
[37] M J Esman, *An Introduction to Ethnic Conflict*, Polity Press, Cambridge, 2004, p. 92.
[38] ibid., pp. 70–71.
[39] D Wippman, 'Practical and Legal Constraints on Internal Power Sharing', in *International Law and Ethnic Conflict*, D Wippman (ed), Cornell University Press, Ithaca, 1998, p. 240.

[40] ibid., p. 231.
[41] *See generally* V P Nanda, 'Ethnic Conflict in Fiji and International Human Rights Law'. *Cornell International Law Journal*, vol. 25, 1992, pp. 565, 570 – 571, 575.
[42] United Nations, G.A. Res. 2106A, U.N. GAOR, 20th Sess., Supp. No. 14, 1965, U.N. Doc. A/6014, 48. The CERD prohibits any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
[43] Nanda, op. cit., p. 575.
[44] United Nations, G.A. Res. 3068, 1973, U.N. Doc. A/RES/3068.
[45] Wippman, op. cit., p. 234.
[46] H J Steiner, 'Ideals and Counter-Ideals in the Struggle over Autonomy Regimes for Minorities'. *Notre Dame Law Review*, vol. 66, 1991, p. 1554.
[47] Wippman, op. cit., p. 233.
[48] ibid., p. 237.
[49] ibid., p. 241.
[50] ibid.
[51] According to the census report of 1991.
[52] M Rahman and T H Shawon, eds., *Tying the Knot: Community Law reform and Confidence Building in the CHT*, ELCOP, Dhaka, 2001, p. 10. A similar attitude is found in the Turkish response to the Kurds, as portrayed by Welat Zeydanlıoğlu in this volume.
[53] ibid.
[54] W Van Schendal, 'The Invention of 'Jumma': State Formation and Ethnicity in Southeastern Bangladesh'. *Modern Asian Studies*, vol. 26, part. 1, 1992, p. 95.
[55] The CHT Commission, *Life is not Ours' Land and Human in the CHT Bangladesh*, Denmark, Netherlands, 1994, p.8.
[56] M Guhathakurta, 'Overcoming Otherness and Building Trust: the Kalpana Chakma Case', in *Living on the Edge: Essays on the Chittagong Hill Tracts*, S Bhaumik (ed), SAFHR, Kathmandu, 1997.
[57] A K Dewan, *Class and Ethnicity in the Hills of Bangladesh*. Quoted in Amena Mohsin, *Politics of Nationalism*, The University Press Limited, Dhaka, 1997, p. 166.

[58] S M Ali, *The Fearful State: Power, People and Internal Wars in South Asia*, Zed Books, London, 1993, p. 183.
[59] Mohsin, op. cit., p. 170.
[60] ibid., pp. 182–184.
[61] Schendel, op. cit., p. 121.
[62] Mohsin, op. cit., pp. 191–193.
[63] Dabeenama (Charter of Demands of the PCJSS to the Government of Bangladesh), JSS Publications, 1992 and 1996.
[64] Special Affairs Division, *A Report on the Problems of Chittagong Hill Tracts and Bangladesh: Responses for their Solution*, Government of Bangladesh, Dhaka, 1993. Cited in Mohsin, op. cit., p. 201.
[65] Mohsin, op. cit., pp. 201–202.
[66] Bengalis who legally possesses land in the Hill District and generally lives at a certain address in the Hill District are also permanent residents of the CHT according to the Peace Accord.
[67] See Articles 27 and 28 of the Constitution of the People's Republic of Bangladesh.
[68] Article 28 (4) of the Constitution.
[69] This argument has been detailed in the preceding section.
[70] Mohsin, op. cit., p. 215.
[71] ibid.
[72] ibid., pp. 215–216.
[73] ibid., p. 216.
[74] ibid.
[75] Report published by Society for Environment and Human Development (SEHD) on Mohalchhari Incidence, Dhaka, September 09, 2003,
[76] The Daily Star, Dhaka, September 4, 2003
[77] SEHD Report
[78] The Daily Star, August 31, 2003.
[79] *See* footnote no. 33 in Steiner, op. cit.
[80] E E Osaghae, 'Human Rights and Ethnic Conflict Management: The Case of Nigeria'. *Journal of Peace Research*, vol. 33, no. 2, 1996, pp. 171–188.

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