

## ARTICLE

**THE PLIGHT AND EXPERIENCE OF CHAKMAS AS INTERNALLY  
DISPLACED PEOPLES & REFUGEES: AN INVESTIGATIONAL AND  
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*In the present scenario, internally displaced persons and refugees have become a major concern and the subject of not only one nation but also overall international relations. The United Nations and the global community have taken serious note of these problems and*

*even come up with separate Conventions to deal with the matters. Present paper conducts an investigation on Chakma refugees, a small, fairly homogeneous, simple society of the Chittagong Hills Tracts (CHT); the sudden transformation of their environment, their reaction and living conditions and the alternatives made available to them by the Government; their experiences, repatriation processes and the present condition of their living with emphasis on the need of regional and national laws on refugees for better assistance and protection of refugees at large. In this paper the Authors have made an attempt to portray that the Peace Accord which was believed to be a turning point for the Chakma refugees brought only ray of hope which is fading away as each day passes. Moreover, the paper presents what would be a durable solution for these helpless people and their future which remains unanswerable and uncertain. In the conclusion, an attempt has been made to propose few suggestions in order to prevent further conflict or resumption of violence and settle a century's long frustration and bring peace for the Chakma refugees.*

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## I. INTRODUCTION

अयं निजः परोवेति गणना लघुचेतसां। उदार चरितानां तु वसुधैव कुटुम्बकम् ॥

*"This is my own and that a stranger is the calculation of the narrow minded. For the magnanimous hearts however, the entire earth is but a family."*

*"There is no sorrow above the loss of a native land"*

**- Euripides, 431 B.C.**

The world has been witnessing a large number of political upheavals in many countries in the post-Second World War and the third world countries are the most affected. The reasons for such disturbances vary from political rivalries, ethnic issues, persecution of people of minorities, racial discriminations, unequal distribution of natural resources and development projects and regional conflict within a country. All these caused creation of refugees and internally displaced persons (IDPs) or internal refugees. Apart from all these man-made disasters, natural disasters like earthquakes, eruption of volcanoes, famines, floods, epidemic diseases etc. have also contributed to the creation of internally displaced persons in relation to local natives in many

under-developed or third world countries especially Asia and Africa. Thus the internally displaced persons and refugees have become a major concern and the subject of not only one nation but also overall international relations. The United Nations and the global community through international laws have taken serious note of these problems and come up with separate Conventions to deal with the matter. According to the latest figures released by the Geneva-based Internal Displacement Monitoring Centre (IDMC), there were 28.8 million IDPs around the world in 2012<sup>1</sup> and around 15.4 million refugees.<sup>2</sup>

The case studied in this paper is of the Chakma refugees, a small, fairly homogeneous, simple society of the Chittagong Hills Tracts (CHT); the sudden transformation of their environment, their reaction and living conditions and the alternatives presented by the provincial government in its programmed design to cope with the change; their experiences as IDPs and refugees; their repatriation processes and the present condition of their living. In the light of the study, an attempt will be made for the need of regional and national laws on refugees for better assistance and protection of refugees at large.

## II. GENEALOGICAL STUDY OF CHAKMAS

The Chakma refugees came from the Chittagong Hills Tracts (CHT) which was formerly a part of East Pakistan and later on became a part of Bangladesh after its liberation in 1971. The CHT is predominantly a traditional homeland of ten ethnic groups – Chakma, Marma, Tripura, Chak, Khyang, Khumi,

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<sup>1</sup> UNHCR, *Internally Displaced People Figures*, available at <http://www.unhcr.org/pages/49c3646c23.html> (Last visited Apr. 5, 2014).

<sup>2</sup> UNHCR. *Facts and Figures about Refugees*, available at <http://www.unhcr.org.uk/about-us/key-facts-and-figures.html> (Last visited Apr. 5, 2014).

Murung, Lushai, Bawm and Pankho. All these indigenous people are popularly known as “Jumma people” or “Jumma Nation” and Chakmas are the largest ethnic group among them. The Jummas are mostly Buddhist, but also have sizeable Animist and Christian populations. The CHT covers approximately an area of 5,138 sq miles and is directly adjacent to the Indian States of Tripura, Mizoram and Arakan Hills of Burma that flank it on the eastern side.

In the pre-colonial period, the CHT had not been part of any state. However, in the seventeenth and eighteenth centuries, the Mughal Empire collected tribute (cotton) from the area through local intermediaries.<sup>3</sup> It was only when the British took control over the area in 1760, a series of conflicts started under direct and indirect economic exploitation due to its very rich industrial raw materials like timber and cotton. ‘Jhum or shifting’ or ‘wet-rice’ cultivations were the principal economic activities used exclusively by the hill-men until 1860’s.<sup>4</sup> It was only after the annexation of the CHT by the British (1860) and the promulgation of rules, which forbade hill agriculture (*Jhum*, shifting cultivation) in Chittagong district<sup>5</sup> that these Chakma cultivators (and other hill cultivators such as the *Marma*) moved east of the CHT.

The Indian Forest Act, 1865 that provided for the concept of “Reserved Forests,”<sup>6</sup> put the resourceful forest area under the ownership and control of

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<sup>3</sup> SUPRIO DASGUPTA, CHAKMA: A CASE STUDY IN THE LIGHT OF REFUGEE AND HUMANITARIAN LAW, A dissertation submitted to National Law School of India University, 1994, at page 15.

<sup>4</sup> David E. Sopher, *Population Dislocation in the Chittagong Hills*, 53 (3) GEOGRAPHICAL REVIEW 337 (Jul., 1963).

<sup>5</sup> When the Chittagong District was carved out in the year 1860 the British totally forbid the practice of Jhum or shifting cultivation and progressively introduced and encouraged wet-rice cultivation.

<sup>6</sup> *Supra* note 3, at 17, ¶ 2.

the state, rendering the free and sedentary people, who had always had a natural right and claim to the resources, into the rent-paying subject of the colonial state.<sup>7</sup> The “non-regulated or excluded area” was administered under a separate edict called “The Chittagong Hills Tracts Regulation of 1900”.

Under a special status during the British rule of the sub-continent, migration to the area was virtually prohibited and the area enjoyed limited self-government. After decolonization (1947), the CHT were incorporated into East Pakistan. The special administrative status of the CHT was continued and the Pakistan Government administered the area on the basis of the CHT Regulation of 1900, but through a series of violations,<sup>8</sup> until 1964 when the CHT lost its special status and autonomy under an amendment to the Pakistan Constitution. Pressure for land to cultivate had in the past led to the migration of large numbers of non-tribals from other parts of Bangladesh into the CHT. This process was actively encouraged by governments since 1960s. After the liberation of Bangladesh the situation in CHT became even worse and deteriorated.

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<sup>7</sup> By the third quarter of the nineteenth century an elaborate system of judicial and administration was introduced under the control of the deputy Commissioner of the District which transformed the communal authority to a paternalistic one. The Chakma chief was responsible for tax collection in the central region of the new possession. Two other chief were made responsible for the southern part (the Bohmong chief) and the northern part (the Mong chief). The Chakma chief, now a colonial grandee endowed with the personal title of raja and some of the trappings of indirect rule, moved to Rangamati, the capital of the new district which the British named the Chittagong Hill Tracts. The colonial system also gave new power to old functionaries at local level (talukdar, dewan, khisa) which came to form the Chakma gentry. The Chittagong Hill Tracts regulation of 1900 formalized this system and also stressed the fact that the area, though administered from Calcutta, was not a regular part of Bengal. Its administrative system, land rights, and closure to outside settlers all set it apart from the rest of Bengal. This status was reconfirmed in the 1930s, when the region was declared an excluded area under the Government of India Act, 1935.

<sup>8</sup> *Supra* note 4, at 20.

### III. THE GENESIS OF CRISIS OF CHAKMAS

The origin of the crisis in the CHT was always believed to be the completion of a Dam at Kaptai between 1957 -1963 when the area was administered by Pakistan. But if we look closely into the history it can be seen that the crisis had started taking its root in the policies, as described in the previous section, adopted by the British. Industry and factory were established in the area and almost all the tribals were rendered into forced labour.<sup>9</sup> When British India gained independence in 1947, the hill people hoisted the Indian flag in the CHT on August 15, as they had been assured repeatedly that the CHT, with a 93 percent non-Muslim population, would be included in India. Only on August 17, two days after independence, was it announced that the CHT had been included in East Pakistan, together with East Bengal. All these policies adopted by the British, however, have an indirect bearing on the crisis in the CHT region.

The whole environment was transformed by the construction of a hydroelectric dam at Kaptai which was proposed by the British in the year 1906. At least 54,000 acres of settled cultivable land, mostly farmed by the Chakma tribes, were lost in 1957 when the government began the construction of the Karnafuli Hydroelectric Power Project. Over 400 square miles of land were submerged with far reaching effects on the economy and lifestyle of the tribal people there. This affected around 18,000 families or approximately 100,000 people lost their homes and prime agricultural lands and more than 40,000 people fled to India. The Pakistan government failed to replace as much plow-land as was lost, not even a quarter of the submerged land was replaced to the victims. Though the Pakistan government took up

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<sup>9</sup> *Supra* note 3, at 18.

certain measures and provided fresh occupational avenues and income generating schemes, but Chakmas could not live a regular life in their traditional way any longer. The problem was further aggravated by the native Chakmas being Buddhists, and the authorities/settlers, Muslims.<sup>10</sup> Adding fuel to the fire, the government opened the area for economic development and encouraged Bengali families to settle there. This caused unrest among the Chakmas against the government policy.<sup>11</sup>

#### IV. VOYAGE FROM INTERNALLY DISPLACED TO REFUGEES

The immediate decision facing the Chakmas due to the construction of Kaptai dam was a choice among general categories of action like (a) to move to higher grounds within their own mawza or one nearby or, (b) to move away from the vicinity of the reservoir to the Kasalong Rehabilitation Area (A rehabilitation camp for displaced people by Kaptai dam), or unclaimed flat land in the upper Chengri and Mayani valley, or to some other parts of the districts.<sup>12</sup> While a large number of the victims of the Kaptai dam moved to the Kasalong Rehabilitation Area around 40,000 peoples fled to India. They were initially sheltered in government camp in Assam and later on shifted to a camp within Arunachal Pradesh which was then known as North East Frontier Agency (NEFA). And a large number of people also fled to different parts of the world.<sup>13</sup>

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<sup>10</sup> Dr. Rajesh S. Kharat, *From IDPs to Refugees – The Trauma of Chakmas in Bangladesh*, Paper presented at 'Researching Internal Displacement: State of the Art' an International Conference on IDPs on 7-8 Feb 2003 at Trondheim, Norway, p. 6.

<sup>11</sup> Anup Sikia, *Tension over Chakma Issue*, 29 (53) ECONOMIC AND POLITICAL WEEKLY 3311 (Dec. 31, 1994).

<sup>12</sup> *Supra* note 4, at 349.

<sup>13</sup> Chunnu Prasad, *Students' Movement in Arunachal Pradesh and the Chakma –Hajong Refugee Problem*, 42 (15) ECONOMIC AND POLITICAL WEEKLY, 1373 (Apr. 14, 2007).



In the early 1950s the Pakistan government, seated in West Pakistan, declared Urdu the national language, ignoring the Bengali-speaking majority population in East Pakistan. Moreover, although most of the foreign exchange was earned in East Pakistan, this part remained largely deprived of economic development. The growing dissatisfaction of the Bengali population that was being denied its own identity, culture, and development finally culminated in a bloody war of liberation, in which some 3 million Bengalis were killed. Bangladesh won independence from Pakistan in 1971 with the help of the Indian army.<sup>14</sup> Indigenous people in the CHT had joined the liberation forces and played an active role in the liberation of Bangladesh. However, Chakma Raja (King) Tridiv Roy—a member of the national parliament—had sided with Pakistan, as he thought that this would better serve his people's interests.<sup>15</sup> This led to a general suspicion of Bengalis towards the indigenous people in the CHT who were, unjustly, regarded as traitors. Both the flag-hoisting incident in 1947 and the collaboration of the Chakma Raja with Pakistan are still sensitive issues and taken by Bengalis as an indication of disloyalty of the indigenous hill peoples to the state of Bangladesh.

In 1972, a delegation of the indigenous people, led by the late Chakma MP Manobendra Narayan Larma, requested autonomy for the CHT including its own legislature, retention of the Regulation of 1900, Continuation of tribal chief offices and imposition of a ban on the influx of non-tribal into CHT<sup>16</sup>. However, Prime Minister Sheikh Mujibur Rahman, who himself had led the

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<sup>14</sup> Jenneke Arens and Kirti Nishan Chakma *Bangladesh – Indigenous Struggles in the Chittagong Hill Tracts*, CONFLICT PREVENTION, available at <http://www.conflict-prevention.net/index.html> (Last visited Aug., 2013).

<sup>15</sup> *Supra* note 9, at 7.

<sup>16</sup> *Id.* at 7.

Bengali people in the struggle for their own Bengali identity and culture, now failed to recognize the legitimacy of a similar demand from the indigenous people. He told them to forget their ethnic identities and to be "Bengalis." He also threatened to flood the area with Bengalis and military troops if the hill people insisted on sticking to their demands. The 1972 Constitution of Bangladesh placed all lands under common use recognizing citizen's fundamental rights of free movement and settlement within all parts of the country.<sup>17</sup> Following Mujib's denial, the indigenous people formed the *Parbatya Chottogram Jana Samhati Samiti* (PCJSS, or the CHT People's United Party) in 1972, and a year later its armed wing, the Shanti Bahini (Peace Brigade). The Bangladesh government accused the PCJSS of being secessionist<sup>18</sup> and used this event as justification for its oppression of the Chittagong peoples.

The situation became worse and deteriorated when the Prime Minister Sheik Mujibir Rahman was assassinated and President Zia-ur Rehman came to power through military coup in 1975. In late 1976, the first armed attack was carried out by Shanti Bahini on a military outpost in the CHT. In the name of counterinsurgency against this event, the Bangladesh security forces perpetrated massive human-rights violations in the region. In April 1979 the first of a series of massacres took place in Kanungopara.<sup>19</sup> In a second massacre on 25 March 1980, indigenous people in Kalampati/Kaukhali were tricked into believing that they were to assemble to repair a Buddhist temple, when they lined up to work they were showered with bullets.<sup>20</sup> Another

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<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 12.

<sup>19</sup> *Id.*

<sup>20</sup> KURT JONASSOHN WITH KARIN SOLVEIG BJORNSON, GENOCIDE AND GROSS HUMAN RIGHTS VIOLATIONS IN COMPARATIVE PERSPECTIVE 257 (Transaction Publishers, 1998).

important element in the counterinsurgency strategy was the settlement of some 400,000 landless Bengalis from the plains in the CHT between 1979 and 1985 under a secret government transmigration program. This dramatically changed the composition of the population: the percentage of Bengalis in the CHT rose from 26 percent in 1974 to 41 percent in 1981.

Later on in March 1989, Bangladesh Parliament (Jatiya Sansad) passed four bills of Hill District Council<sup>21</sup> aiming at resolving twenty year long-standing conflict. Although hundreds of followers of Shanti Bahini surrendered during this period the movement for regional authority all over CHT and insurgency did not stop which led to the frustration of the Bangladesh government in conducting elections in the CHT. So armed forces were raised which compelled thousands of Chakmas to cross over the Indian border. More than ten major massacres have taken place between 1979 and 1993 in the CHT.<sup>22</sup>

The Chakmas might have realized that it would be very difficult to survive in the CHT under constant threat of Bangladesh military and persecution. As a result many of the Chakmas began to migrate to the bordering states of India as refugees. About 40,000 Chakmas had entered the Indian state of Mizoram in 1983, and about 50,000 Chakmas entered the Indian State of Tripura between April 1986 and May, several others fled to isolated jungle areas<sup>23</sup>.

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<sup>21</sup> Four Hill Districts Council namely Rangamati Parbhatyya Sthaniya Parishad, Khaagarachari Parbhatyya Sthaniya Sarkar Parishad, bandarbanm Parbhatyya Sthaniya Sarkar Parishad and Parbatya Zilla Special Bill were passed granting the autonomy to the above mentioned three areas only while undermining the other ethnic minorities support for Shanti Bahini.

<sup>22</sup> *Supra* note 12.

<sup>23</sup> *Supra* note 9, at 10.

## V. PLIGHT OF CHAKMAS AS IDPs AND REFUGEES

The first group of refugees that had entered India due to the Kaptai Dam were initially sheltered in government camps in the state of Assam and later on moved to the camp in Arunachal Pradesh. The main issue regarding this group of Chakmas is the right to citizenship and right to vote. Under Section 3(1)(a) of the Indian Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 is a citizen of the country. There are about 35,000 who were born in India after 1964.<sup>24</sup> Under the Indian Citizenship Act, they are Indian citizens by birth and, consequently, eligible to vote. However, when the Chakmas who satisfy the Act's requirements tried to register in the electoral rolls, the concerned State Government officials refused to accept their applications. They have been subjected to all kinds of discriminations, and the All Arunachal Pradesh Student's Union (AAPSU) have been attempting to drive them out of the state of Arunachal Pradesh and the Supreme Court had to intervene and gave directions to be followed and carried out by the state.<sup>25</sup>

Another group of Chakma refugees who were sheltered in the state of Tripura and other parts of North Eastern States of India were also facing different kinds of problems and discriminations.<sup>26</sup> Most of them were staying at refugee camps established by the Government of India which have been

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<sup>24</sup> UNHCHR, *Effective Functioning Of Human Rights Mechanisms: National Institutions And Regional Arrangements*, 2002, available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/9df628b1cb944109c1256b5e003a2815?OpenDocument> (Last visited Apr. 6, 2014).

<sup>25</sup> See *Louis De Raedt v. Union of India*, AIR1991SC1886; *State of Arunachal Pradesh v. Khudiram Chakma*, AIR 1994 SC 1461; and also *National Human Rights Commission vs. State of Arunachal Pradesh*, AIR 1996 SC 1234.

<sup>26</sup> S. A. Zafar, *Indo-Bangladesh Relations: Problems and Prospects*, *Pakistan Horizon*, 46 (3/4) PAKISTAN INSTITUTE OF INTERNATIONAL AFFAIRS 89 (July-October, 1993).

variously described as 'squalid' and 'ill-equipped' with no kitchen or latrines attached to them. They were given a daily ration of 400 gms. rice, 15 gms. of salt, and a dole of 20 paise per day.<sup>27</sup> Drinking water and medical facilities were inadequate, health care for the inmates of the camps was virtually non-existent with five doctors and five dispensaries for the six camps which was worsened by the irregularity of supply of medicines. There were primary schools in all the six camps and secondary schools till class ten, where most of the teachers rendered voluntary service and some with very limited allowances of Rs. 100.<sup>28</sup> Moreover, the refugee children were not allowed to sit for the Board Examination conducted by the state of Tripura.<sup>29</sup> Because of the almost non-existence of such facilities, the camps' inmates had to find ways of earning some money usually through manual labour at a cheaper rate than those of the local peoples and that often caused tension with the local peoples<sup>30</sup>.

## VI. LEGAL FRAMEWORK FOR THE PROTECTION OF CHAKMAS

### *A. International Legal Regime*

As per Article 1(2)<sup>31</sup> of the United Nations 1951 Convention relating to the Status of Refugees (CSR) and its 1967 Protocol 'refugee' is "a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country."

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<sup>27</sup> INTERNATIONAL REFUGEE LAW: A READER 500 (B. S. Chimney ed., 2000).

<sup>28</sup> *Id.* at p. 501

<sup>29</sup> *Supra* note 3, at 117.

<sup>30</sup> *Supra* note 21, at 502.

<sup>31</sup> Due to limited space the whole of Article 1 is not mentioned here. It can be easily seen in the Convention Relating to the Status of Refugees, 1951.

Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees cannot be over-stressed. On the basis of the above definition, Chakma refugees fulfilled the requirements for claiming and to be accorded refugee status and they are entitled to all the protections given under the Convention and its Protocol.

### *B. National Legal Regime*

India extends protection to refugees as a Party to a number of United Nations and World Conventions on Human Rights.<sup>32</sup> In absence of a specific legislation, refugees are treated under the Foreigners Act 1946, Indian Passport Act, and Registration of foreigners Act 1939 or in special cases through orders like the Foreigners from Ugandan Order, 1972.<sup>33</sup> Further, the Constitution of India guarantees certain fundamental rights, which are applicable to non-citizens, namely, the right to equality (Article 14), the right to life and personal liberty (Article 21) and the freedom to practice and propagate their own religion (Article 25). Any violation of these rights can be remedied through recourse to the judiciary as the Indian Supreme Court has held that refugees or asylum seekers cannot be discriminated against because of their non-citizen status.

### *C. The Judicial Appreciation*

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<sup>32</sup> India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organization of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters. Apart from this, India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967 and accepted the principle of *non-refoulement* as envisaged in the Bangkok Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. It also ratifies ICCPR, ICESCR, and CEDAW etc. Being a signatory to all this international instrument place an obligation on India in regard to refugees.

<sup>33</sup> *Supra* note 21, at 485.

In India, the judiciary has played a very important role in protecting refugees. Court orders have filled legislative gaps and in many cases have provided a humanitarian solution to the problems of refugees. Moreover, Indian courts have allowed refugees and intervening Non-Governmental Organizations (NGOs) to file cases before them. Furthermore, the courts have interpreted provisions of the Indian Constitution, existing laws and, in the absence of municipal law, provisions of international law to offer protection to refugees and asylum seekers<sup>34</sup>. There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens<sup>35</sup> The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens.<sup>36</sup> The Supreme Court extended the protection to Chakma Refugees while hearing the matter of *Louis De Raedt vs. Union of India*<sup>37</sup> and also *State of Arunachal Pradesh vs. Khudiram Chakma*.<sup>38</sup> The Supreme Court judgement in the Chakma refugee case clearly declared that no one shall be deprived of his or her life or liberty without the due process of law.<sup>39</sup>

In the case of *National Human Rights Commission vs. State of Arunachal Pradesh*<sup>40</sup> the Supreme Court restrained the forcible expulsion of Chakma refugees from

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<sup>34</sup> Tapan K. Bose. *India: Policies and Laws Towards Refugees*, HR SOLIDARITY (2010), available at <http://www.hrsolidarity.net/mainfile.php/2000vol10no10/745/> (Last visited Apr. 6, 2014).

<sup>35</sup> INDIA CONST. arts. 14, 20 and 21. .

<sup>36</sup> *Id.*

<sup>37</sup> (1991) 3 SCC 544.

<sup>38</sup> 1994 Supp. (1) SCC 615.

<sup>39</sup> In the *Louis de Raedt* case the Supreme Court held that the fundamental right of the foreigner is confined to Art. 21 of the Constitution for life and personal liberty but does not include the right to reside and settle in this country, as mentioned in Art 19(1)(e), which is applicable only to citizens of this country.

<sup>40</sup> Civil WP No. 720, 1996 [1] Supreme 295.

the state. The Chakmas (and Hajongs) of Arunachal Pradesh have a verdict in their favour from the Apex Court and the Delhi High Court, the support of the Rajya Sabha and, ostensibly, bureaucratic compliance from the Central Government ensuring that the Chakmas (and Hajongss) receive their full rights of citizenship.<sup>41</sup>

## VII. CONFLICT MANAGEMENT AND REPATRIATION OF CHAKMA REFUGEES

### *A. Official Efforts of Conflict Management*

From 1983 the International Labour Organization (ILO) criticized the Bangladesh government annually for inadequate reporting with regard to ILO Convention 107 on Indigenous and Tribal Populations to which Bangladesh is a signatory. The CHT issue was also raised annually in the UN Working Group on Indigenous Populations, and the Bangladesh government was questioned in the UN Human Rights Commission and the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1987, the PCJSS demanded the deployment of a UN Peace-Keeping Force and implementation of its demands for withdrawal of the security forces and the Bengali settlers under the auspices of the UN. The successive governments, however, ignored this demand. No foreigners were allowed in the CHT and news coming out of the CHT was heavily censored<sup>42</sup>.

However, successive governments in Bangladesh initiated dialogue with various groups representing the tribal people of the CHT to explore solutions to the conflict. These at times resulted in limited agreements between the two sides. One such agreement reached in 1985 between the Government of

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<sup>41</sup> *Chakmas and Hajongs Denied Their Rightful Place in Arunachal Pradesh*, ARCHIVE, available at <http://archive.is/4vbIC>. (Last visited Apr. 6, 2014).

<sup>42</sup> *Supra* note 4.



General Ershad and a breakaway faction of the PCJSS headed by Priti Kumar Chakma – generally known as the “*Priti Faction*” – this resulted in the surrender of some 300 “*Priti Faction*” fighters who accepted a rehabilitation package offered by the government, but was rejected by the PCJSS headed by JB Larma. Further meetings between General Ershad's Government and a committee representing elements from the CHT resulted in the establishment of four Hill District Councils,<sup>43</sup> each composed of a two-thirds tribal majority with a tribal chairperson. But the establishment of these Hill District Councils did not succeed in resolving conflicts in the CHT instead it took another form of insurgency as the movement of regional autonomy for the whole of CHT did not stop.

In May 1992, at the end of a visit to India by Prime Minister Begum Khaleda Zia, the two governments in a joint declaration stated their commitment to a speedy repatriation of tribal refugees to the CHT. In July that year the Government of Begum Khaleda Zia constituted a nine-member committee headed by a cabinet minister Col. Ali Ahmed to make recommendations to the government on how to resolve the conflict. The year 1993 which was declared ‘*the Year of Indigenous Peoples*’ has a considerable pressure on Bangladesh to bring home the Chakma refugees. The cabinet minister himself went to visit the Chakma refugees living in Tripura refugee camp on 8-9 May 1993. There has been no public information about any recommendations the committee may have made. But this visit failed to convince the refugees to return despite promises of ‘improved’ conditions in the CHT<sup>44</sup> unless the 13-

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<sup>43</sup> Chandan Nandy, *Unwanted Migrants*, 28 (40) ECONOMIC AND POLITICAL WEEKLY 2102 (Oct. 2, 1993).

<sup>44</sup> *Supra* note 21, at 498.

point Charter of Demands set forth by the refugees was granted, even the Indian authorities have ruled out any forcible repatriation of refugees.<sup>45</sup>

However, on 16 January 1994 a 10-member delegation of refugees headed by Mr. Upendralal Chakma along with Indian officials left for CHT to hold a high-level meeting with the Bangladesh government regarding repatriation. On the agreement that the Bangladesh government would pay Rs. 1,600 (about US \$50)<sup>46</sup> as subsistence allowance per refugee family for the first six months<sup>47</sup> the first repatriation process began and around 400 families comprising 2,500 persons were sent back.<sup>48</sup> But a large number of families were not given back their homes, lands and property and suffered from a sense of insecurity because of the existence of numerous camps of the Bangladesh army close to their ancestral homes.<sup>49</sup> Despite the apprehensions of the first batch of the returnees, a second repatriation had taken place in July 1994, a total of 1292 families consisting of 6272 members were repatriated by August in that year.<sup>50</sup>

#### *B. The CHT Peace Accord Of 1997*

The Government of Prime Minister Sheikh Hasina which assumed office in June 1996 following general elections established a Committee in October that year chaired by the Chief Whip of the Bangladesh National Assembly to work

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<sup>45</sup> R.S Diwan, *Human Rights in the Chittagong Hill Tracts*, A paper presented on Refugee Studies Programme, Oxford on 13 February 1991.

<sup>46</sup> Ninette Kelley, *Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh*, 69 (2) THE UNIVERSITY OF TORONTO LAW JOURNAL 349 (Spring 2010).

<sup>47</sup> *Supra* note 21, at 498.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 499.

<sup>50</sup> *Id.* (In the first phase of the repatriation that took place in February 1994, 2500 peoples left, and in the second repatriation a total of 752 families consisting of 3767 members were repatriated by August 1994)

out a solution to the conflict in CHT. The 12-member committee was made up of parliamentarians from the ruling Awami League, the opposition BNP and Jatiya Party, retired government officials and other professionals. On 2 December 1997, an agreement generally known as the "*Peace Accord*" was signed between the National Committee on CHT and the PCJSS in the presence of highest government authorities in Bangladesh. It required changes in Bangladesh law to enable the formation of the CHT Regional Council, a body with a range of autonomous responsibilities. However, at least three smaller political groups in the CHT, namely *Pahari Gano Parishad* (PGP or Hill Peoples Council), *Pahari Chattra Parishad* (PCP or Hill Students Council) and Hill Women Federation (HWF), challenged the right of the PCJSS to be the sole representative of the tribal people and sign the accord on their behalf.

The landmark peace accord of Chakma aimed at ending the decades old insurgency in the CHT within the framework of the Constitution. The accord is expected to reverse the disturb condition, insurgencies and serious human right violation in the CHT and is supposed to assure hill people that their human rights would be protected. The accord is the recognition of the fact that the life and property of the ethnic groups needs to be protected by special legal provisions and institutional changes in the political, economic, civil, social and cultural rights would be maintained by necessary legal and administrative measures.<sup>51</sup>

The most important aspect of the peace accord relates to measures for creating peace and security and the establishment of the CHT Regional

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<sup>51</sup> *Id.* at 503.

Council "comprising the Local Government Councils of the three Hill Districts"<sup>52</sup>. It is important to consider the contents of the peace accord. It stated that all the refugees stranded in south Tripura camps would be taken back to their homes and would be given the necessary help and incentives for starting their new lives. The rehabilitation of the surrendered PCJSS and Shanti Bahini members and withdrawal of criminal cases against insurgents are also included in the accord.<sup>53</sup> The accord stipulates that land would be returned to the owners once their ownership rights were ascertained, and a land survey would be undertaken in the CHT to ascertain ownership rights. Moreover the accord was expected to empower the indigenous people in certain areas by devolution of power.<sup>54</sup>

### *C. The Actual Repatriation of Chakma Refugees*

As mentioned earlier the first repatriation of tribal refugees began after an agreement in 1994 between the BNP government and the Jumma Refugee Welfare Association (JRWA) representing CHT tribal refugees in camps in the bordering Indian state of Tripura. Around 6,000 refugees returned home that year, but the repatriation program was stalled after refugee leaders alleged that Bangladesh was not fulfilling its promises.

Under another agreement signed between tribal activists and a Bangladesh negotiating team from Dhaka in Tripura on 9 March 1997, tribal refugees agreed to return home. The accord offered an amnesty for those facing criminal charges, safety assurances and guaranteed job and financial help to build houses and restore land. The first batch of around 5,000 tribal arrived in

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<sup>52</sup> *Supra* note 23.

<sup>53</sup> *Supra* note 4.

<sup>54</sup> *Supra* note 3, at 13.

the CHT town of Ramgarh on 28 March 1997.<sup>55</sup> After the CHT Peace Accord, 1997 all of the Chakma refugees in the Indian state of Tripura - some 65,000 people – were repatriated to the CHT. Officially, as of now, there are no more Chakma refugees in India.<sup>56</sup>

However, despite the promises of the government and the terms of the Peace Accord of 1997, the repatriated tribal refugees have found their home disappeared. A substantial number of the returnees are still believed to be without land, even the agricultural land owned by them was already occupied by the Bengali Muslim settlers with the support of local administration and military officials.<sup>57</sup> Summing up the situation, the USCR: Country Reports: Bangladesh 2000, reported the facts revealed by the UN Working Group on Indigenous Population that ‘the situation of more than 60,000 Chakmas and other Jummas who became internally displaced during the last three decades also remained unresolved at the years’ end. Many still did not have access to land, education, and other social services. Most of these displaced people are now living in remote and inhospitable hill and forest areas without decent livelihood and with no access to health care facilities’<sup>58</sup>.

*D. The Implementation of the CHT Peace Accord 1997 and the Present Situation.*

Though the peace accord of 1997 and the subsequent legislation have addressed the root cause of insurgency and the refugee flow, much depend on the actual implementation of the terms of the accord. Although the government has amended existing laws to provide for the implementation of

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<sup>55</sup> *Supra* note 4.

<sup>56</sup> Bethany Lacina, *The Problem of Political Stability in Northeast India: Local Ethnic Autocracy and the Rule of Law*, 49 (6) ASIAN SURVEY 998 (November/December 2009)

<sup>57</sup> *Supra* note 3, at 14.

<sup>58</sup> *Id.*

the peace accord, the accord is facing a number of difficulties which require urgent and continued attention. The first one is the slow pace of implementation by the government. Concern over this has been raised by the international community, by the human rights groups in and outside Bangladesh, and by the tribal people of the CHT, at times threatening to derail the peace process altogether.<sup>59</sup>

Although the accord, by and large, has been accepted by majority of the CHT, disaffected political groups like PGP (Hill Peoples Council), PCP (Hill Students Council) and others disagree with the peace accord. They consider the accord to have failed to respond to their aspiration of full autonomy and failed to *“reflect the genuine hopes and aspirations of the peoples of the CHT and has failed to fulfill the main demands of the Jumma people namely, constitutional recognition to the national ethnic minorities of the CHT with guarantee for Full Autonomy, restoration of traditional land rights, demilitarization of the area, and withdrawal and resettlement of the Bengali settlers in the plain land.”* These perspectives have the potential to aggravate local issues and increase the tension between the CHT communities inherent in any post-conflict situations. These sections of indigenous people have declared their intention to continue the struggle for autonomy by democratic means and they formed the *United Peoples Democratic Front* (UPDF) in December 1998. Since then there has been a violent conflict between the PCJSS and UPDF which adds to the

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<sup>59</sup> Sanjay Barbora, Susan Theme, Karin Astrid Seigmann, Vineetha Menon, Ganesh Gurung, *Migration Matters in South Asia: Commonalities and Critiques*, 43 (24) ECONOMIC AND POLITICAL WEEKLY (Jun. 14-20, 2008).

continuing instability in the area and which is another worrying point for the people of the region in the postaccord period.<sup>60</sup>

While the accord requires that any settlement or acquisition of land should be done with the consent of the District Council, the PCJSS complains that the government has acquired huge tracts of land for setting up a new army training ground and an air force base in Bandarban district, violating the existing laws and most importantly, the spirit of the peace accord. The government has also expanded the Reserve Forest and is planning to declare more land as Reserve Forest. But the main point of disagreement between the two parties is on the relocation of the Bengali settlers and subsequently the preparation of a voters' list for the region, based on the stipulation agreed in the peace accord. The alleged noncooperation by the government on the latter issue has even led the PCJSS to boycott the last national parliamentary elections.<sup>61</sup>

Another issue is the implementation of withdrawal of Army camps from the CHT (Article 17(a) of the CHT Peace accord of 1997) is yet to begin in a true sense. The accord is silent about the time frame of withdrawal of the military camps. According to government 240 out of 500 camps have already been withdrawn. While PCJSS estimates that only 74 camps are actually withdrawn and the processes stopped in 2009. Thousands of acres of land

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<sup>60</sup> Ninette Kelley, *Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh*, 69 (2)THE UNIVERSITY OF TORONTO LAW JOURNAL 349 (Spring 2010).

<sup>61</sup> Sanjay Barbora, Susan Theme, Karin Astrid Seigmann, Vineetha Menon, Ganesh Gurung, *Migration Matters in South Asia: Commonalities and Critiques*, 43(24) ECONOMIC AND POLITICAL WEEKLY 57 (Jun. 14-20, 2008).

have been occupied for military purposes and the government has been establishing more military camps<sup>62</sup>.

#### VIII. CRITICAL EVALUATION & CONCLUSION

The people of the CHT share with many other oppressed people the fact that their oppression is, above all, a denial of their very identity. They are people for whom there is no place; who are not expected to exist as such. This is the situation of the Kurds in the Middle East, the Indians in the Americas, the Papuans in West New Guinea. The signing of the accord has resulted into two strategic developments in the CHT– the surrender of arms and the return of refugees and their rehabilitation. Accordingly, a good number of representatives from donor country/agencies and multilateral development agencies have visited the region, and some of these agencies have started to disburse funds for different development projects. Alongside these initiatives, a number of NGOs—both local and national—are also undertaking development programs. Prospects for peace in the CHT have at least become brighter. In the meantime there are several other weaknesses which could not be overlooked. The provisions of the peace accord of 1997 have not been fully implemented. When the accord was signed, it was widely hoped that it would usher in a new age for the people of the region with a greater pace of socioeconomic development. In fact, many refugees are still not properly rehabilitated, many have not yet had their land returned and some are still living in transit camps. Violation of human rights has been taking place and it has become more of a day to day routine.

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<sup>62</sup> *Id.*



In light of this situation mentioned above, it might be asked what possibility is there that the situation will relapse into conflict? The accord certainly envisages a political process that has been, by and large, accepted by the public. And it will be difficult for the PCJSS and Shanti Bahini leaderships simply to go back to the jungle and resume insurgency. So instead, one should ask how the situation in the CHT might evolve in the near future. If a power vacuum is not properly filled, the risk of anarchy always remains potent, and that is exactly what is happening at present in the CHT. The present law-and-order situation and the activities of the UPDF may be seen as symptoms of a "residual insurgency" from which the region is suffering at present. If the root causes of the conflict are not properly addressed, any fault-line conflicts always have the potential to rekindle at any moment. Furthermore, it has to be kept in mind that, geopolitically, the CHT straddles an active cross-border insurgency area. Hence, continuing frustration may provide incentives for regrouping and the resumption of violence, perhaps not necessarily with insurgency but with other equally disruptive forms for the society as a whole.

At last but not the least, from the point of view of what had been discussed in the forgoing chapters, it can be clearly seen that the peace accord which was believed to be a turning point for the Chakma refugees brought only ray of hopes which is fading away as each day passes. Thus, the question regarding a durable solution for these helpless people and their future remains unanswered and uncertain.

