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The Land Tenure Dynamics in the Post-conflict Chittagong Hill Tracts (CHT), Bangladesh

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Abstract

This paper analyses the post-conflict dynamics of land tenure in the Chittagong Hill Tracts (CHT), Bangladesh. The key argument is that the post-conflict CHT is a hybrid land context, apparently where land tenure is insecure, where the ownership is contested between tribal and settler households and where large-scale acquisition and incremental land grabbing is occurring in absence of effective tenure governance. The access, control and transfer of land rights have been core of the violence in CHT. The paper further argues that the competition between customary landowners and settlers seeking customary lands for developing economic projects make the land context more complex. This changing idea of land control is associated with (dis)possession dynamics. The role of negotiation in market, use of violence and resistance are also linked with land dynamics.

1. Introduction

Land is a fundamental resource that has everyday dynamics in conflict, violence and development in the Chittagong Hill Tracts (CHT) of Bangladesh. The allocation of rights, restrictions and responsibilities to land (use/access, control and transfer) within the society has been core of the violence in CHT. This paper analyses the post-conflict dynamics of land tenure in the Chittagong Hill Tracts (CHT) of Bangladesh. The fundamental aim of this paper is not only to elaborate different land dynamics that consider as driver of changes in land ownership, but also to identify the existence of different types of local practices of land access in CHT. The paper argues that the post-conflict CHT is a ‘hybrid land context’ apparently where land tenure is insecure, where the ownership is contested between tribal and settler households and where large-scale acquisition and incremental land grabbing is occurring in absence of effective tenure governance. The land ownership patterns, types and transaction process in CHT also differ from that of plain districts in Bangladesh. The paper further argues that the competition between customary landowners and settlers seeking customary lands for developing economic projects make the context more complex.

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Furthermore the customary tenure in CHT is also undergoing rapid changes with the pressure emanates from increasing (dis)possession dynamics that offer relatively more access to land to the land poor settlers through informal market, negotiation and use of violence. However, with land control continues to be central on the policy level in CHT affairs, a focus on post-conflict land dynamics could inform new processes and practices leading occurrence of land grabs and acquisition in local circumstances.

In the following, we start with the brief review of CHT conflict in the introduction (section 2) and then go on to the analyses of post-conflict land tenure context (section 3). This section demonstrates the new socio-economic and demographic features in CHT that resulted in legal pluralism and land tenure anomaly in CHT in the post-conflict context. The subsequent section draws the conclusions highlighting the growing informal buying and selling of land in the post-conflict CHT context.

The analysis is based on the qualitative fieldwork in four different *mouzas* in Bandarban district in the Chittagong Hill Tracts (CHT) of Bangladesh during April-August 2012. A *mouza* is basically a revenue village composed of several *paras* or small villages. The study area is selected after an explorative field studies in different districts of CHT. During explorative field studies we find several types of land dynamics and interactions in these villages. However, none of the villages are distinct from the entire CHT context. All villages can be considered as rural and inhabited by both tribal and settlers communities. Then we have conducted random and in-depth interviews with household landowners, farm growers, leaseholders, heads of traditional (headman and karbari) and local government institutions, and representatives of NGOs. We have conducted numerous informal interviews with a group of people involved in selling and buying customary land. To supplement interviews, five focus group discussions have been carried out with similar stakeholders. Although the analysis focuses mostly on study villages, similar trends can be found in other part of CHT and possibly beyond.

2. Contextualizing land in CHT conflict: a brief overview

The Chittagong Hill Tracts, known as CHT, is the home to the largest concentration of the indigenous tribal communities in the Southeastern part of Bangladesh. The CHT area is approximately 13,189 sq. klm, bordering two-thirds with India and Myanmar. The overall area of CHT is about 10 per cent of the country. The total population of CHT is around 1.3 million of which 51 per cent are tribal indigenous and 49 per cent are settler migrants. At least, over a half million of indigenous people live in CHT, consists of at least 11 ethnic groups, including the *Chakma, Marma, Bawm, Sak, Khumi, Khyang, Mru, Lushai, Uchay, Pankho, Tanchangya* and *Tripura* (Roy 2000). Historically, the conflict rooted in British colonial era followed by a process of political, social and economic alienation not only by the British and Pakistan regimes but also during different political regimes in Bangladesh. Violent conflict started after the Independence of Bangladesh when the new government rejected the demands of political and cultural autonomy of the tribal people. But, the CHT area underwent armed violence in the early of 1975 with massive militarisation and armed activities by the state military forces and non-state rebels. The rebels were from 11 ethnic communities living in CHT. The armed violence has been continued since decades. Levene (1999) states, over the years the CHT region has experienced a genocidal process with the development interest of state, which he called as the political economy of ‘creeping genocide’. After about three decades of violence, a Peace Accord was signed in 1997 between Government and the *Parbatya Chattagram Jana Samhati Samity* (PCJSS), the

organization that led the armed rebellion. There are many fissures among the CHT groups. The United People's Democratic Front (UPDF), a rebel organization, even opposes the CHT Peace Accord stating it as 'far short of meeting the needs and grievances of the Hill peoples'.

As indicated before, conflict in CHT is apparently consequence of the politics of nationalism within the state (Mohsin 1997). But the consequent violence, even in post-conflict time, is not merely result of conflict, rather an outcome of the process of conflict. From that perspective, there is a precise link between land and conflict in CHT. As land issues are unsettled, it has remained a fundamental resource for conflict and violence. Challenges to access and control over land are still rolling over the conflict process. Access to land is the root of the problem, but the Accord has little addressed land tenure issues.¹ One Hill leader says, "land is the crux of the problem in CHT. Unless the Hill people get back their land rights there can't be a successful resolution to the problem" (Mohsin 1997: 111). After few years of the Accord in 2001, though unilaterally by the government, a Land Dispute Resolution Commission was established with much optimism to resolve disputes pertaining to land tenure, particularly related to land distribution, access and possession. But the PCJSS opposed Land Commission's activities claiming that the Commission was biased to the migrant people. By now, with widespread boycott and non-participation of tribal households, the CHT land commission has remained ineffective and controversial. However, the CHT is now in post-Accord situation. Still the violent land grabbing and general intimidation continued in the region (Chakma, K. and D'Costa, B. 2012). Hence, the local dynamics of land tenure points to be fundamental to move out from the disputes.

3. The post-conflict land dynamics in CHT: Pluralism and tenure anomaly

This section first analyse some post-Accord dynamics/factors that have been considered as driver of changes in land ownership, and then identify the existence of different types of local practices of land tenure in the area. This section helps us to map out competition between different actors with regard to land access and ownership in CHT. As stated above, after decades of armed struggle and violence, a peace Agreement was signed to resolve several aspects of disputes. There was lots of enthusiasm about the impacts of this agreement on land. However, after 15 years of the agreement, the result only marks the beginning of the process to resolve disputes over land access. The significant impact in the post-conflict context is new dynamics, practices and changes with regard to ownership and control of land. This has become possible due to open up the opportunities for outsider access to CHT land and subsequent competition between land users and owners. There are several issues that need to be elaborated to understand pushes and pulls factors of competition for land in CHT.

3.1 New titling process to begin: the upcoming Cadastral Survey

The important feature that I find in the area to be considered is the tensions surrounding the upcoming Cadastral Survey. The land in CHT is never goes through comprehensive title registration process. A cadastral survey is supposed to be done in CHT to settle disputes over land access and tenure. But this is now seems to be a paramount challenge in the region. The entire CHT demography have had experienced (dis)possession dynamics during and after the violent conflicts. The settlers are very keen to register their possession through this cadastral

¹ See, for details of land related aspects in CHT Accord of 1997, CHTC, 2000. *Life Is Not Ours*, Dhaka: The Chittagong Hill Tracts Commission.

survey. This would probably legalize and institutionalize their settlement documents or their control over land that is said to be disputed and fraudulently manufactured during conflict and post-conflict period. We find instances that the land currently using by settler households without being recorded in their names but they don't know even who is the real owner at least in documents. In some other instances, although the lands are documented to tribal households and the document still valid, the same land is given *bondobostya* (settlement) to new settler. Given this situation the tribal people are concern about the (dis)possession of customary land.

To address these challenges the Accord states (Article 2, Clause D) that the cadastral survey is only to be held after meeting two certain conditions: the rehabilitation of civil war refugees and IDPs, and resolving disputes over land access. These two conditions are yet to be implemented. Moreover, this is also the fact that the land still under the control of tribal people mostly customary type and most of the tribal people don't have land documents. A document is believed to critically serve the purpose of evidence of ownership in the cadastral survey. Hence, mainly the tribal people are rush to have a document before the cadastral survey to begin. The tribal political and social leaders protest against holding the cadastral survey in CHT, during our fieldwork we confront number of people everyday come to local headman office to have a 'headman recommendation'² so that at least they could have produced a document to the survey officer.

"I requested *mro* people (tribal) to take recommendation from me, but they ignored because they had to pay little money. Now many people come to me everyday and I raise the fees little more. This even could not prevent them. They need a document." (Headman of a *Mauza*, Lama)

"I come from *chongmongpro* village. We used to cultivate 10 acres of land (*pahar* and plain land) for many years. We got these lands from my father. We don't have any *kabuliyat* (title documents). Last year a refugee (Bengali settler, the tribal people consider settler as refugee) started cultivation in a *chilte* (small piece of land) near my land. I am afraid he might *dokhol* (take possession) of my land. My uncle has lost his land same way few years back. I need a *kagoj* (document). I heard that government would come taking all lands without *kagoj*." (A tribal landowner seeking a headman recommendation in a *Mauza*)

The above two quotes state the tensions and dynamics surrounding upcoming cadastral survey among the tribal people. It also indicates that new types of informal land control are increasing in the wake of proposed cadastral survey in CHT.

3.2. Mobility towards CHT: Growing local economy and new form of transmigration

The second feature is the changes in the local (regional) economy. After the Accord, the CHT has under gone significant socio-economic and demographic changes (see figure 1). The CHT land turns into valuable resource than before. Once the area was important for *Jhum* (shifting) farming, now people, both settler and tribal, are more interested in tobacco cultivation. Every year the number of tobacco farmers and processing kilns are increasing.

² The headman recommendation is the primary document that people need to have to go with further process of land settlement in the Chittagong Hill Tracts. The Headman is the chief of a *mauza* and historically and traditionally in charge of resolving inter and intra household and land disputes through conducting local *shalish* in their own area. The 1900 CHT Manual (Colonial), subsequent Amendments and also the CHT Peace Agreement 1997 recognize the responsibilities of headman.

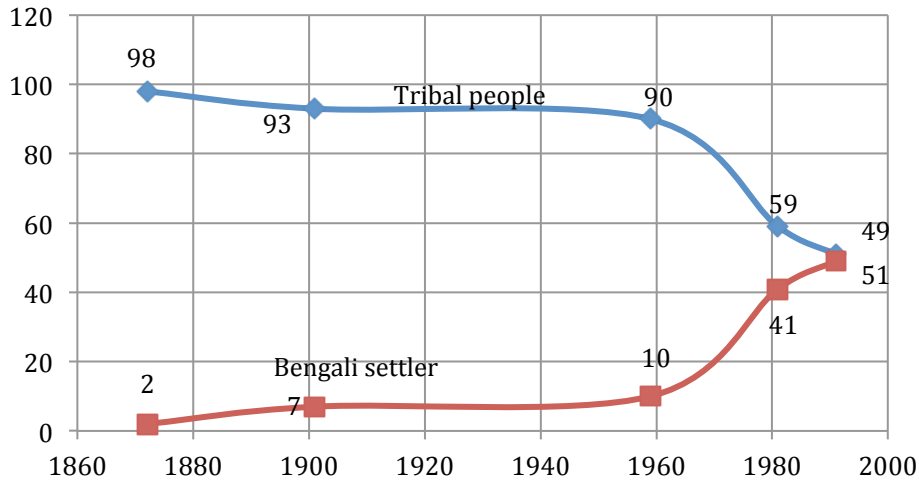
According to data from the Department of Agricultural Extension (DAE 2009), more than 7,000 farmers are involved in tobacco production in CHT. Particularly, the tobacco farming is increasing in the post-conflict time due to several factors. People have now more access to financial resources and techniques than before. There are hundreds of small-scale money providers, both individual and micro money-lending enterprises, operate in the farming areas. Many of our respondents share inside stories how once *Jhum* farmers suddenly engage with tobacco farming and subsequently losing their customary land for not being able to pay back to the money-lord. It may be mentioned that there are lots of uncertainties in tobacco cultivation linked with microclimate of the area. However, this is relatively a short-period of cultivation and the return is financially better than the other traditional forms of cropping, such as paddy, banana, bamboo, cotton, etc.³ This has significant impact on price of land, and thus, on control and ownership of land. The companies in cooperation with local stronghold are reeling off everyday to establish their control over land. They often produce a document through the help of administration or informally buy land from the local people.

Another post-Accord feature is the newer forms of Bengali settlement combine in complex ways; already migrated individuals initiate the new form of settlement. They frequently take help from the civil or military administrations. During conflict time, most of the Bengali settlements were initiated and protected directly by the government and military forces. As Adnan (2011) states, this used to happen in two ways of demographic engineering during conflict time: first, the forcible displacement of tribal landowners by the military forces as counter strategy which creates large displacement and availability of land for others, and secondly, through a well planned political migration process with the help of civil administration by which a large number of people from plain land arrived in CHT to occupy lands left by displaced tribal people. Now it is more of the second-generation type of transmigration in which already settled people play the key role. It has become everyday process. The settlers are bringing their kin people from their origins (respective regions). During our fieldwork, we find region-based tenancy in different villages. For example, if one *para* (village) is concentrated with people from *Kutubdia*, the other one is from *Maheshkhali*. We find different dynamics for this. Bringing own kin people often gives more leverage of establishing influence or gaining social power in the society. We also find kind of doing business out of it. Our respondents inform us that they have paid money to already settled people to come in this area. This often provides shelter to the new arrival people. We find several groups of people came in one of our field location (*dordori*) from *Kutubdia* when their homes just washed out due to costal erosion in 2004. They first communicate to a known person who came here about 13 years ago. This person with the help of other local political leaders finds a place near the slop of a hill. Initially there was resistance by the *mog* community (*mro* tribal group locally call *mog*), because they have been using this land since last 25 years for harvesting bamboo and fuel woods. They claim this their ancestral land for more than a Century. Later both traditional and local administration involved with this.⁴ During our fieldwork we find status quo with nothing significant changes afterwards. We hear more of this type in other areas. It is important to look into that the increasing use of individual or social dynamics in transmigration process that is of more recent nature in CHT, also confirmed by local key informants. However, this scenario has impact on the local process of land access and control. In another way, this causes the increases of price of formal/informal land ownership. This makes the land tenure in CHT anomaly.

³ Excerpt from the interviews with tobacco farmers in study area.

⁴ Excerpt from the interviews with settler and local residents.

Figure 1: Demographic changes: tribal vs settlers, 1872-2001



3.3. Pluralism and tenure anomaly

The post-conflict unfolding combining with previous factors (during armed violence), apparently makes CHT land tenure an anomaly. The land tenure system has been facing a range of challenges, such as multiple titling, informal markets, fraudulent transaction, disputes over grazing, biased land distribution by successive governments, etc. Apparently all these happening in the situation of legal pluralism in terms of co-existence of at least four parallel types of law and practices: formal laws applicable for whole country, formal laws applicable only for CHT, customary rights for practices by the tribal people, and informal practices both by the tribal communities and settler people. As a result of multiple practices, at least three types of land ownership have been prominent in CHT: common property, recognized as a customary right of tribal communities; non-recorded traditional customary land, owned by an individual, family or clan; and registered ownership with deeds certified by the administrations. Significantly the registered owners are migrated people during armed conflict. A UNDP study (2009) shows about 79% of tribal people have no registered private ownership of land that is they hardly have security of rights to access and control of land.

In this complex and plural framework, Adnan (2011) mentions different types of land transaction process exists in CHT. State acquisition of private and common lands owned by the tribal household and communities according to customary rights is the prominent form of land transaction in CHT. The second type of transaction is coercive form, in which rights of private and common lands of the tribal people moves to settler interest groups and agencies. In this process land becomes private property of powerful groups and agencies. The third type of transaction promotes privatization of common land by tribal strongmen. In this process, the powerful tribal groups become the landowner. And, the fourth type is the formal registration and titling of land rights to non-tribal people and commercial farms. In most cases producing a document critically serves the purpose of access to and use of land.

It is also important to mention that the process of land transactions is not conclusive. Often indicates an ambiguous relationship between different tenure types and institutions in CHT. The traditional institutions claim regulatory role according to customary law. The local

government institutions tend to regulate land access and use through statutory law. The informal land actors operate in space of public failure reflecting power relationship within the society.

4. Conclusion: Growing informal land markets

In the post-conflict CHT with significant plural circumstances, the access and control of land really matter. The conflicting and ‘informal tenure’⁵ elements are increasing. In absence of effective land policies, the important driver in the local land market is informally buying and selling of customary lands between different stakeholders. Land markets operate through *de facto* negotiations, without use of formal documents or *de jure* rights. We find despite the insecurity of land ownership and low margin of profits in investment households and farms have been encouraged by the tenure motivation. The long-term occupation in different ways provides the security of access to land in study villages. The current land reform policies in the context of CHT are far cry to consider the local reality of land tenure.

Hence, in the post-conflict situation, land access is ensuring not only economic benefits but also new process of claiming land ownership. The new dynamics operates at the local level when households and farms occupy customary land, when customary owner (re)claim those lands, when occupants want to manufacture or apply for land titles, and when state follows unequal land distribute policies. This changing idea of land control is associated with (dis)possession dynamics. The role of negotiation in market, use of violence and resistance are also linked with land dynamics.

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⁵ For instances, squatting, un-authorised use, un-official rental, contested purchase, multiple titling, etc.

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