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Afro-Asian Syndrome of not Recognizing Indigenous Peoples: Why Bangladesh Should Recognize Indigenous Peoples of Chittagong Hill Tracts

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ABSTRACT

Before European colonization, the continents of Asia and Africa were home to thousands of indigenous communities. Colonizers lumped together big chunks of these continents for administrative expediency, and ruled hundreds of indigenous communities as one people, namely, colonized people, though they were not one people but many. Centuries of colonial rule cemented the unity of these peoples somewhat, especially in their common fight against the colonizers. But the decolonization of Asia and Africa brought about a new reality for smaller indigenous groups. Now the majority groups in the newly independent countries of Asia and Africa started claiming that there were no indigenous groups within their boundaries. The smaller "nations within" were simply "minorities"—not indigenous peoples. Since this trend of non-recognition—as was seen during the meetings of the UN Working Group on Indigenous Populations—is common to almost all countries in Asia and Africa, this paper calls the trend "Afro-Asian Syndrome of non-recognition."

The paper diagnoses the reasons behind the Afro-Asian non-recognition syndrome. In doing so, it has been investigated as to why

Page: 15

the Afro-Asian countries prefer calling smaller nations "minorities" rather than "indigenous peoples." One of the reasons pertains to the absence of definitions of these two above-mentioned terms in international instruments. So far as the term "indigenous peoples" is concerned, this paper identifies that defining the term alone would not resolve the problems of recognition. Nor do indigenous peoples want definition of the term in international instruments. In a world order where sovereign nations call the shots, indigenous peoples fear that strict definition of the term would deprive thousands of indigenous groups of indigenous status. They further argue that self-definition as "indigenous" is an important component of their right of self-determination, which was guaranteed for all peoples in various international human rights treaties. However, in absence of an accepted definition, the Afro-Asian governments and indigenous groups keep maintaining totally opposite views about the defining criteria, history and justifications of indigenousness. Hence, there still remains a huge vacuum and lack of clarity regarding determination of indigenousness. African and Asian countries have been taking a huge advantage of the "definitional puzzles" in not recognizing indigenous peoples. Bangladesh is a case in point.

In the penultimate part of the paper, I have explained that the root of the definitional debacle and non-recognition of indigenous people lie elsewhere; it lies in the "fear" of the Afro-Asian states regarding certain rights of indigenous groups, which is seen by states as "dangerous" to their sovereignty. Such rights include, right to self-determination, right to self-governance, right to land and resources,

and right to consultation and consent. I argue that if these rights are understood in their proper context, it would be clear that the "fear" of the Afro-Asian states is totally unfounded. Finally, based on historical and cultural background of the indigenous peoples of the Chittagong Hill Tracts (CHT), I recommend that Bangladesh recognize the indigenous peoples of CHT constitutionally.

Keywords: Afro-Asian syndrome, non-recognition, indigenous peoples, Bangladesh, Chittagong Hill Tracts.

I. INTRODUCTION

Like indigenous peoples in other parts of the world, indigenous Jumma peoples of the Chittagong Hill Tracts (*hereinafter* CHT) in Bangladesh have been fighting for constitutional recognition of their *identity* and *customary land rights* for several decades now. This struggle for constitutional recognition began some 47 years ago during the framing of the constitution. It is a paradox that they are to fight this fight against a people, namely the majority Bengali people, who themselves had a long history of fighting, *inter alia*, for constitutional recognition of their *language* and *regional autonomy* against the [West-] Pakistani civil-military bourgeoisie.[1]

Once Bangladesh became independent in 1971 and the Bengali people became the majority nation in independent Bangladesh, the Bengali national leaders started with a denial to recognize Jumma peoples' identity and customary rights in the same fashion as the Pakistani national leaders had done to them before. Therefore, denial of recognition of minorities and indigenous peoples seems to be a trend rather than a discrete response of one majority nation to its correlative minority nation(s). As we will discuss below, such non-recognition is a common trend across Asia and Africa; we can perhaps call it *'Afro-Asian Syndrome of non-recognition.'*

In the constituent assembly debates of newly independent Bangladesh, the first Prime Minister of Bangladesh Sheikh Mujibur Rahman asserted that Bengali nationalism shall be the main pillar of the state.[2] Accordingly, the constitution of Bangladesh declared the country as a mono-cultural, mono-national and monolithic state, where all people would belong to Bengali nation, and Bangla would be the state language.[3] Thus, the state has "categorically refused to create any space [for] or accord any recognition to the minorities" and the indigenous peoples in the constitution.[4] Jumma peoples have ever since engaged themselves in a struggle for constitutional recognition by various means, and the state has continued its denial thereto.

Fortunately, things have begun to change at the international level in recent times, with their impact felt at the national levels. There have been tremendous developments in the field of indigenous peoples' human rights under the auspices of the United Nations since 1970s. Before that time, it was the International Labor Organization (ILO) that spearheaded the cause

of indigenous peoples at the international level. But due to some serious shortcomings of those efforts in particular, and the weaknesses of the international law in general, states escaped responsibilities towards indigenous peoples, including their recognition.

Unfortunately, Bangladesh is among those states that have not ratified the ILO Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Nor did Bangladesh sign the United Nations Declaration on the Rights of the Indigenous Peoples, 2007 (hereinafter UNDRIP). Bangladesh abstained from signing UNDRIP on the ground that "the Declaration contained some ambiguities; particularly that "indigenous peoples" had not been identified or explicitly defined in any way."[5] During the Universal Periodic Review (UPR) of Bangladesh before the Human Rights Council in 2013, Bangladesh persisted on the position that "there are no 'indigenous minorities' or 'group[s]' in Bangladesh. All citizens of the country are indigenous to the land."[6] The contradiction in this position is self-evident, which seems to stem from the Eurocentric misunderstanding of the concept of indigeneity. Bangladesh's current position on indigenous peoples of CHT is: "the tribal people living in Chittagong Hill Tracts are "ethnic minorities" and they should not be called "indigenous" in the region."[7]

This article argues that the above mentioned *de jure* governmental position is in odds with the country's *de facto* recognition of the indigenous peoples of CHT evident in different governmental policies and previous laws. The article further argues that absence of a concrete definition or well-established defining criteria are being utilized by the government of Bangladesh as a plea for not signing the UNDRIP, though in reality the main reason for not signing such treaties lie in the unwillingness of Bangladesh to recognize indigenous peoples' identity and their most fundamental claims. This article finally argues that there can be several indigenous peoples in the same country.

This article is divided into four parts. Part I dissects the *Afro-Asian syndrome of non-recognition*, explicates the distinctions between minority status and indigenous status, and finally explores the reasons for Bangladesh's denial to recognize indigenous peoples and its preference of rubric "ethnic minority." Part II explores the pros and cons of the absence of a formal definition of indigenous peoples at the international level. Part III focuses on the unique rights that indigenous peoples demand, and tries to understand their nature vis-à-vis governmental apprehensions. The fourth part

argues that Bangladesh should *recognize* the identity and customary land rights of the indigenous peoples *constitutionally*.

II. WHY AFRO-ASIAN COUNTRIES PREFER THE RUBRIC "ETHNIC MINORITY" TO "INDIGENOUS PEOPLES" AS IDENTITY OF SMALLER GROUPS WITHIN THE STATE

A. Theoretical Issues: "ethnic minority" or "indigenous peoples?"

The concepts of 'ethnic minority' and 'indigenous peoples' often overlap though they are not identical. Prior to 1970, indigenous peoples enjoyed protection of human rights mostly under the rubric "minority rights."[8] Later on, it was realized that the rubric "ethnic minority" was not enough to grasp special claims of the indigenous peoples. Henceforth, indigenous peoples rejected their classification as minority "in favor of a classification as peoples."[9] Renewed aspirations on the part of indigenous peoples, along with an international atmosphere supportive of their cause since 1970s, resulted in a reclassification of international human rights regimes: one focusing on *indigenous peoples*, and another on *national minorities*.[10]

Such parallel developments do not mean that the distinction between these two

concepts is crystal clear. Far from that, Will Kymlicka, for example, noted that the question of distinction between these concepts still poses "deep theoretical puzzles."[11] There are authors who even doubt if it is "at all possible to distil the select group of 'indigenous peoples' from the volumes of 'minorities'."[12]

The reasons behind the "theoretical puzzles" are several. First, international law does not provide well-articulated definition of neither of these concepts.[13] Absence of such definitional specificity in both cases has often been attributed to some phenomenological difficulties, such as, diversity of groups represented by each rubric, changing perceptions, need for allowing

Page: 19

flexibility, need for building strategic alliances, and the fear of a definition getting misused.[14]

Second, in almost all countries, except a few exceptions,[15] indigenous peoples do form numeric minorities.[16] Until recent vigor of international indigenous movements for distinct identity, indigenous peoples in most countries were treated as minorities, and they were content with their minority status vis-à-vis migrants and other ethnic, cultural, and linguistic groups. As a minority, the best national treatment they could expect was benefitting from welfare measures and affirmative actions.

Third, related to the previous point, modern liberal constitutions bundle together the claims of non-majority groups in the same rubric as "minority demands" because of liberal states' *principle of non-discrimination* among minorities and the *commitment for equality*. More importantly, modern states are afraid of indigenous identity because if "challenges totalizing views of "nation" and the "nation state."[17] Unity and uniformity being the dominant guiding features of the modern constitutionalism for the last three hundred years, the modern nation-states seem to sideline indigenous peoples by treating them as no more than ethnic minority, given their seemingly disruptive claims.[18] Benedict Kingsbury opines that "many issues concerning indigenous peoples do not fit readily into structures of liberal thought."[19]

Fourth, linked with two above-mentioned theoretical reasons, many of the demands of indigenous peoples did not need special status as indigenous peoples. They could still avail many international legal protections relating to treaties, diplomatic protections, environmental law and procedural due process even when reckoned as minorities.[20]

Fifth, as Kymlicka mentions, in a system of international legal order dominated by the strong principle of territorial integrity that allows a very narrow space for self-determination, the status and claims of indigenous peoples and ethnic minorities differ only in degrees, not in kind.[21]

Page: 20

For the above reasons, sovereign states prefer lumping together all non-majority peoples as "minority groups." But indigenous groups stress on recognition of their indigenous status. To them, "minority" is a derogatory epithet that does not suffice because of indigenous peoples' historical status as landed communities who governed themselves from time immemorial.

B. Policy Issues: Why Afro-Asian countries seek to avoid the rubric "indigenous peoples"

The above discussion also informs the Afro-Asian countries' position preferring the rubric "ethnic minority" to "indigenous peoples," and escaping recognition of indigenous peoples. Of course, it can be argued that countries in Asia and Africa are not ideologically homogenous to allow generalization.[22] In fact, the countries of these two continents have different policy-approaches regarding indigenous peoples. Still surprisingly there is a pattern regarding their policies to indigenous peoples. Therefore, there must be strong motivations/reasons behind the pattern of Afro-Asian indigenous policies. The prime motivation perhaps is the so-called nation-building expediency of these post-colonial countries in exclusion to other contenders having some sorts of 'claims of sovereignty,' as is evident from the statements and representations of the Afro-Asian countries made during UNDRIP preparatory meetings of the UN Working Group on Indigenous Populations. It is a fact that other "minorities" generally do not put forward as stronger claims of self-determination and land rights as the indigenous peoples do. They generally remain content with human rights protections in general, and special welfare measures and affirmative actions.

Historical facts have also helped the Afro-Asian countries develop some arguments for non-recognition. In those countries that fell under European colonization, the non-European peoples *collectively* stood up as "natives of the land" against the outsider-colonizers though those "natives of the land" belonged to numerous separate ethnic groups initially. The togetherness of the diverse peoples during the freedom struggles against European colonizers had a huge impact in the process of decolonization and nation-building process of the Afro-Asian countries during post-colonial times to the disadvantage of smaller indigenous groups. The post-colonial Afro-Asian countries maintain that all non-European natives are indigenous peoples of the decolonized land; and no group within the boundary of the state can make a claim of indigeneity as if the majority is non-indigenous.

Other countries that did not experience colonialism as such maintain that colonialism is a prerequisite for the application of the rubric "indigenous."

As the Chinese government argued before the UN Commission on Human Rights in 1995: "[A]s in the majority of the Asian countries, the various nationalities in China have all lived for aeons [sic] on Chinese territory. Although there is no indigenous peoples' question in China, the Chinese government and people have every sympathy [sic] with indigenous peoples' historical woes and historical plight."[23] The Chinese statement represents "the majority of the Asian countries." The Chinese government's position is an archetype of *Afro-Asian denial policy*, asserting that categorizing some groups in these countries as "indigenous peoples" is simply a mistake.

Another related historical fact, as Bendict Anderson has asserted, is that ethnic minorities were created by colonizers for coalition-building purposes with them, to use them against the burgeoning nationalist movements of the majority groups in colonized countries.[24] Minorities were tolerated in so far as they were not big threats to the colonial governments unlike bigger nationalist groups who were making transcendental claims to sovereignty. In the post-colonial states also, the same strategy of using minorities and taking advantage of their vulnerable conditions for the majority's purposes continued. The policy or trend of patronizing minorities and loathing indigenous groups happened to have had such a historical continuity that the concept of indigeneity was never allowed to flourish.

The great waves of decolonization throughout Asia and Africa mostly gave the power of enacting constitutions only to majority nations, unfailing to their advantage at the cost of smaller indigenous groups. What the bigger nations did was: they asserted 'exclusive sovereignty' in their respective post-colonial states. There was a golden opportunity of rewriting the rules in the post-colonial constitutions based on fairness and justice in distribution of resources and power, whereas the majority nations across Asia and Africa used their powers for excluding smaller indigenous peoples demonstrating 'colonial mentality.' Hence, decolonization did not bring any change for smaller groups except introducing a band of new rulers of non-white skin color who now reduced these smaller indigenous groups to "Fourth World Peoples"[25]—peoples who "found themselves under another form of colonization after the departure of the western European colonizers."[26]

The majority nations' policy of adopting constitutions with 'colonial mentality' often linked to the nation-building impetus of the newly born countries. The necessity of working together as united force against the

colonizers during independence movements have often been carried through uncritically during the constitution-making process, ignoring the distinct aspirations of the indigenous peoples. The traditional conception of state "as the political embodiment of a nation comprising all of the peoples within a state" has dominated in the policy formation of the Afro-Asian countries, Bangladesh being a devout follower of that policy paradigm.

African and Asian countries took the policy of asserting that there are no indigenous peoples in these countries during the UNDRIP negotiations. The majority of the countries that abstained from voting were either Asian or African.[27] Because of the overall resistance of the Afro-Asian countries, the adoption of the Declaration took 24 years, an additional year being delayed because of a motion of three African countries.[28] The strong opposition to indigenous existence and recognition as such came from Asian countries of "China, India, Bangladesh, Myanmar and Indonesia"[29] In its representation before the Working Group on Indigenous Populations, Bangladesh government argued that "it would be a great disservice to the true indigenous people if the agenda for indigenous people were allowed to be confused with the agenda of other sub-national and tribal groups that constituted minorities within their respective countries."[30] The words "sub-national" and "tribal" are pejorative epithets in the Bangladeshi context denoting "lesser than nation" and "not civilized" respectively. The policy of denial thus taken by Bangladesh has been continuing, though many countries that took such strong views earlier have later on changed their policies and adopted the policy of recognition.[31]

C. Practical Issues: How indigenous issue is projected as a threat to the unity of the state

Apart from their theoretical and policy positions, Afro-Asian countries also offer some practical arguments explaining difficulties in accommodating indigenous peoples outside the general minority frameworks. The main argument they offer is apparently a *humanitarian* one, which maintains that special status to indigenous peoples in Afro-Asian countries can come only at the expense of other poor peoples who are as underprivileged as the

indigenous peoples are.[32] This view makes a wrong comparison, a comparison between indigenous peoples and other disadvantaged groups based on their economic position, which, even if realistic in some cases, masks the real issue of historic injustices that the indigenous peoples suffered everywhere in the world unlike other underprivileged peoples regarding their resources and status.

This practical allegation of discrimination among the disadvantaged groups could have been accepted only when indigenous rights would be projected as "special privilege" rather than framing it as normal human rights denied to indigenous peoples while others could always enjoy them. In practice, the argument forwarded is a reflection of the policy of non-recognition discussed above. Indigenous framework does not deny, rather asserts, that other minority groups should also be protected, creating opportunities for them to enjoy all human rights they are entitled to because of their humanity and degrees of vulnerability.

Based on the narrow conception of indigeneity as prior presence, another practical argument forwarded is that "after centuries of migration, absorption and differentiation, it is impossible to say"[33] who are indigenous and who are not. We can call this the *problem of historic amnesia*. As Adam Kuper argued, "Precisely whose ancestors came and when may…be problematic," especially when "over the centuries communities migrated, merged, died out, or changed their languages and altered their allegiances."[34] We will argue, later in this paper, that the narrow conception of indigeneity cannot do justice to Afro-Asian indigenous peoples who have experienced a different kind of colonization, and are still suffering from the attitude of coloniality in post-colonial states from majority nations. Indigenous peoples are definitely identifiable once we accept the broader concept of indigenousness.

It has been also argued that recognition of indigenous identity will create local frictions. We can call this problem *alarmism*. In the words of Horwitz, "if some people are "indigenous" to a place, others are vulnerable to being targeted as non-indigenous, and groups deemed to be migrants or otherwise subject to social stigma may bear the brunt of a nativist "indigenist" policy."[35] India, for example, in denying indigeneity of groups mentioned about extreme nativism of pro-Marathi, Hindu-nationalist Shiv Sena party in Maharashtra claiming historical priority leading to even

communal conflicts.[36] Such isolated negative examples should not be used to deny recognition of indigenous peoples because most indigenous peoples in Africa and Asia seek recognition to make themselves safe from the human rights violations of dominant groups, not for violating human rights themselves.

III. ABSENCE OF DEFINITION OF "INDIGENOUS PEOPLES": PROS AND CONS

A. Absence of Definition

There is no universally accepted definition of "indigenous peoples." The opportunity to set up such a definition was missed, mostly deliberately, in 2007 when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted without a formal definition despite long deliberations on this issue. This absence of definition was predicated partly by the "*Afro-Asian problematique*" of indigenous question. Miguel Alfonso Martinez, the Rapporteur on the Working Group on Indigenous Populations, coined this term in his 1999 report when he said: "the term 'indigenous'—exclusive by definition—is particularly inappropriate in the context of the

Afro-Asian problematique and within the framework of United Nations activities in this field."[37] Martinez argued: "Asian and African peoples are all indigenous to their lands and therefore no one population should be afforded special indigenous status."[38] Martinez's view is uncritical of the dispossession, dislocations and forced migration of indigenous peoples that happened in many parts of these two continents. His view is identical with the exclusivist nationalistic definition proffered by most African and Asian governments. The view of Martinez was based on *narrow literal meaning* of "indigenousness" that has gone through various transformations in the process of its graduation into a *legal technical concept* in international law.

In the literal sense, the word 'indigenous' means *native*, or *prior in time*. The ordinary meaning also includes the requirement of maintaining the group identity for a long period of time. In the transformation of the concept of indigeneity from literal to legal, these two requirements: *historic priority* and *group continuity* have enjoyed significant prominence.[39] Later on, the component of *colonial invasion* was added to the equation, which kept even more important mark on the concept, making indigenous identity

Page: 25

almost dependent on the condition of prior presence in a locality previous to a critical date[40]—the date of invasion. These are just a few components of indigenous identity as it is understood at present; other components were added to the concept as the time passed on and as indigenous peoples got a chance to put their views on the matter of definition. But the three components mentioned above—*prior presence, historical continuity and colonial experience*—have kept an indelible impact on the common perception about indigeneity, so much so that absence of any one of these criteria is considered as a defect to indigenous identity.

The most cited *working definition* of "indigenous peoples," which was put forward by the United Nations Special Rapporteur Jose R. Martinez Cobo in 1986, also reflects the predominance of the above-mentioned three components. Cobo defines,

> *Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of the society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continuous existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*

This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

(a) Occupation of ancestral lands, or at least of part of them;

(b) Common ancestry with the original occupants of these lands;

(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.);

(d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);

(e) Residence in certain parts of the country, or in certain regions of the world;

(f) Other relevant factors.[41]

The definition mentions non-dominance, cultural distinction, occupation of ancestral territories and all "other relevant factors" as criteria to indigenous identification but stipulates that all these criteria will be definitive of indigeneity only when peoples claiming themselves as indigenous have "historical continuity with pre-invasion and pre-colonial societies that developed on their territories."[42] Such a stipulation of pre-colonial presence makes this definition especially suitable to the indigenous peoples of Americas and Australia who experienced European colonization but unsuitable for indigenous peoples in Asia, Europe and Africa who have either not experienced European colonization or experienced a different kind of subjugation or disruption. The pre-condition of "invasion" and "colonization" in the definition helped Asian governments to argue that "the concept of "indigenous peoples" is so integrally a product of the common experience of European colonial settlement as to be fundamentally inapplicable to those parts of Asia that did not experience substantial European settlement."[43] Even those countries that experienced European colonization, for example, India and Bangladesh, argue that since all people living in those countries suffered the brunt of colonization in common, all are indigenous.[44] Therefore, it appears that any definition of indigenousness based on the condition of colonization is a limiting one, which will exclude many Asian and African peoples from the category of "indigenous" in spite of their relatively prior presence in some locality.

The UN Permanent Forum on Indigenous Peoples commented on this aspect of Cobo's definition by holding that it is certainly true that Africans are indigenous to Africa and Asians are indigenous to Asia, in the context of European colonization. Nevertheless, indigenous identity is not exclusively determined by European colonization."[45] Because of these shortcomings, Cobo's definition is unacceptable to Asian and African indigenous peoples. Other scholarly definitions that refer to colonization as a foremost criterion of indigeneity have the same effect.

More current understanding of indigeneity "includes elements beyond priority in time,… deemphasizes 'tribal' elements and does not make

colonization the sole condition for indigenousness."[46] One of such definitions was attempted by Benedict Kingsbury. In an attempt to provide a constructivist definition of indigenousness inclusive of east, southeastern and south Asian indigenous peoples, he mentions four criteria as "essential requirements" of indigenousness. They are: (1) self-identification as a distinct ethnic group; (2) historical experience of, or contingent vulnerability to, severe disruption, dislocation or exploitation; (3) long connection with the region; and (4) the wish to retain distinct identity.[47] He thinks that three other criteria are highly relevant though are not essential. They are: (5) non-dominance; (6) cultural affinity with a particular land territory, and (7) historical continuity with pre-colonial society. These three later criteria are considered non-essential because all indigenous peoples do not share these aspects, though the presence of these aspects would strengthen the categorization of peoples as indigenous, and their absence would weaken such categorization.[48]

While attempts to provide broader and inclusive definition by scholars are

appreciated[49] and sometimes critiqued, the fact remains that these scholarly definitions do not enjoy legal status or sanctity. At present, two definitions provided by the ILO Convention No. 107 and the ILO Convention No. 169 respectively enjoy international legal significance though only for a limited number of countries, which ratified these conventions.[50]

International Labor Organization (ILO) is the leading international organization that took steps to protect indigenous rights worldwide, though within its limited scope, until 1970s when the United Nations took it up seriously. However, ILO adopted its convention no. 107 in 1957, which was titled the Convention Concerning Indigenous and Tribal Populations. Article 1 of the convention distinguishes those tribal peoples that are indigenous and those that are not. Article 1(1)(b) defines indigenous tribal peoples as those members of tribal and semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization

and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.[51]

In this definition, indigenousness has been made dependent on prior presence before conquest or colonization. In other words, "what makes a tribal population indigenous, according to the Convention No. 107, is a history of conquest or colonization."[52] Article 1(1)(a) makes the Convention applicable also to tribal non-indigenous peoples, who are given protection of this convention because of their poor "socio-economic conditions" in comparison with "other sections of the national community." Fortunately, Bangladesh is a party to this Convention, and is bound by its provisions. However, because of the restrictive definition of indigenous peoples in the Convention and availability of parallel definition of non-indigenous tribal people, as mentioned above, Bangladesh has the scope to argue that it treats the hilly peoples of Chittagong Hill Tracts as tribal non-indigenous peoples under Article 1(1) (a) rather than as tribal indigenous peoples under Article 1(1)(b).

The ILO Convention No. 107 was revised in 1989 by the more progressive ILO Convention No. 169 titled "Convention Concerning Indigenous and Tribal Peoples in Independent Countries." The revision came out of the realization that the ILO Convention No. 107 contained outdated conception of indigeneity that emphasized on *assimilation* and *integration* within the ambient society rather than acknowledging the *distinctive rights* of indigenous peoples.[53] Although a more progressive revised ILO Convention on Indigenous Peoples is available now, Bangladesh, along with 17 other countries, remained a party to the ILO Convention No. 107 rather than ILO Convention No. 169.

In spite of Bangladesh's non-ratification of ILO Convention no. 169, it is relevant for the country "both because of its inspirational value and also because the Committee of Experts — which monitors the implementation of Conventions No. 107 and 169 — follows the progressive spirit of Convention No. 169 and rejects the integrationist orientation of Convention No. 107."[54] The Convention No. 169 also applies to both indigenous and non-indigenous tribal peoples. Article 1.1 (b) holds that the convention applies to "peoples in independent countries who are regarded as indigenous on account of their

descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions." Again the emphasis is on conquest and colonization that does not fit into indigenous histories of many African and Asian countries[55].

Under both conventions emphasis is put on the history of the colonization of the state in which indigenous peoples live instead of tracing the history of different indigenous communities as distinct peoples. In such an account, internal subjugation does not count as colonization, though their effects are the same for indigenous peoples.

Article 1.2 of the ILO Convention No. 169 brought in a unique method of indigenous identification in the following words: "Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply." This concept of "self-identification" has been rejected by most of the Afro-Asian countries, though the same has been supported and accepted by the indigenous peoples of Asia and Africa. Since Afro-Asian governments keep on not recognizing the self-identified indigenous peoples, the Afro-Asian problematique of indigenous question cannot be solved under the definitional criteria provided in these two conventions.

Given such a definitional vacuum, controversy regarding who is indigenous and who is not remained the central bone of contention between Afro-Asian governments and the indigenous groups during the two decades long negotiation on the United Nations Declaration on the Rights of Indigenous Peoples, which is now regarded as the norm-setting instrument for the indigenous peoples.[56] The Declaration provided no definition of indigenous peoples, though Article 33 of the Declaration mentioned that self-identification is the right of the indigenous peoples. In a sense, it can be said that self-identification is the principal defining criterion of determining indigenousness at present, given that both the ILO Convention No. 169 and the UNDRIP—the two latest indigenous human rights instruments—endorsed it. However, Afro-Asian countries do not accept self-identification as a criterion of indigenous recognition but indigenous peoples do; on the other hand, Afro-Asian indigenous peoples do not accept colonial history as a pre-condition but the governments do. Hence, it seems like we have come a full

circle in our definitional discussion. In such a situation, a linking thread seems to be missing in the definitional enterprise. What is that thread? That is the question.

B. Arguments in Favor of and Against Definition

There are scholars and indigenous activists who think that absence of strict definition of indigenous peoples is beneficial for the indigenous peoples. They offer several reasons for such a view. First, absence of definition preserves the right of indigenous peoples to identify themselves as indigenous, which is also a part of their right to self-determination.[57] In this view, a strict definition will snatch away this important right of self-determination because in international forums, it is the

governments who define international terms, and in defining the term "indigenous," governments will definitely set such criteria that will exclude various indigenous groups from the indigenous category.[58] Second, as the Working Group on Indigenous Populations argued during the UNDRIP preparatory stages, a universal definition of indigenous peoples is unachievable given the diversity of peoples that claim the status of indigeneity in different regions of the world.[59] Such a definition will be either "under -or over-inclusive."[60] Such a definition will not make sense in some societies; though will make sense in others.[61]

Third, not only in theory, but also in practice an objective test will work contrary to the interests of Afro-Asian indigenous peoples. In the present structure of international legal order, governments have enormous leverage in interpreting history in favor of their national interest, "resulting in blanket claims that no 'indigenous peoples' exist within their territory."[62]

Fourth, another argument against objective definition is contextual-practical. Since 1970s, many Afro-Asian indigenous rights movements and their international networks helped ingrain the concept of indigenous peoples more firmly at the international stage. A definition of indigeneity mainly

based on the Euro-centric understanding would exclude some of the activist Afro-Asian groups from the fold of indigeneity, thereby weakening international networks of indigenous rights movements.[63]

Those who do not support a strict universal definition of indigenous peoples seem to support self-identification as a method of determining indigeneity. But Afro-Asian states often deny recognizing self-identified indigenous peoples. Moreover, Self-identification has the potential to be misunderstood and misused; "self-identification does not and cannot mean that indigeneity is simply a matter of volition, or self-selection."[64] There must be some sorts of criteria that will make groups eligible to self-identify themselves as indigenous.

In such circumstances, the doctrine of self-identification, though important, does not meet the reality of international legal order. The doctrine does "not obviate the need for some agreed criteria or for institutional procedures of assessment in certain situations."[65] If self-identification were enough criterion, the rights mentioned in the Convention No. 169 and the UNDRIP "would vest in all peoples claiming indigenous status."[66] But it is not the case when it comes to practical world, "which suggests that there are additional international legal requirements of indigenous recognition in international law."[67] That agreement may come in a unique manner, more in the nature of a "sui generis" concept, but must have a mutual agreement as a term of reference by both indigenous peoples and the governments.

There are scholars who think that absence of definition is creating problems for indigenous peoples in the real world. It is not mere a matter of "terminological quibbles."[68] Firstly, the absence of definition as to who is indigenous and what are the criteria to determine indigeneity is leaving room for governments to categorize "indigenous peoples" as "minorities" or "tribals." As long as different categories of vulnerable peoples are offered with different sets of rights in international law, with some special rights offered to indigenous peoples, aspiring indigenous peoples will be deprived of those special rights if they are categorized as anything but indigenous. In absence of established criteria, they cannot justify their claims.[69] For example, the ILO Convention No. 107 and 169 keep the scope for arguing that the terms "indigenous

peoples" and "tribal peoples" are distinct, and

countries can accept these conventions while not recognizing a particular group as indigenous though they self-identify themselves to be so.[70]

Secondly, it is argued that just as a bad definition can operate against indigenous peoples, "so too can lack of definition exclude appropriate claimants and include inappropriate claimants."[71] Especially in the context of "extensive set of rights" made available to the indigenous peoples by international human rights instruments unlike other vulnerable groups, non-indigenous peoples will be naturally tempted to exploit the absence of definite criteria as an opportunity to adopt indigenous status to enjoy those rights, "thus harming the true beneficiaries" of those rights.[72] In absence of definition, a number of countries, including Bangladesh, took the opportunity to exploit this absence of definition as a plea to deny endorsing the UNDRIP and recognition to indigenous peoples constitutionally. Indigenous peoples of Asia and Africa noted this problem in earlier WGIP sessions, and supported definition on the grounds that their governments were using lack of definition as an excuse for non-recognition.[73] Some anthropologists argue that without definition the term indigenous is of little use.[74]

What is the solution of this definitional puzzle? True it is that to define the term indigenous is difficult, given the diversity of the peoples that claim themselves as indigenous and international law and politics involved in this matter. The difficulty is multiplied by the fact that the Afro-Asian governments and indigenous groups take totally opposite views about the defining criteria, history and justifications of indigenousness. In such situation of conflicting claims, no definition can be without its opponents and critics. But a total absence of any established criteria is even worse in that the problem of non-recognition is technically, though not fully, stuck in the quagmire of definitional question. Therefore, for the sake of consistency and some sorts of commonness in understanding indigeneity as a term in international law is expected. That commonness of understanding need not come in the form of a positivistic strictness of an objective definition. I agree with the author who opined that what is necessary is not definition, rather conceptual clarity or broader criteria that will be "flexible, but focused."[75]

Why are such an established criteria required? It is because in absence of such criteria in currently operative international law, recognition of indigenous peoples remains a matter of States' whims and volition. Patrick Macklem thinks that international law does not provide any criteria to determine indigeneity. The two recognition methods currently available-self-identification and recognition by State—do not have to follow international norms in recognizing indigenous identity. In his words, "the first approach relies on indigenous peoples themselves; the second relies on States…This suggests that international law does not regulate international legal recognition at all—either because States determine the criteria by which indigenous peoples assume international legal existence or because indigenous peoples themselves determine their own international legal status"[76] Being indigenous in local

perception and being indigenous in international law are two different things.

I propose a broader definition of indigenousness. In its application, a two-prong test should apply, which combines self-identification of indigenous peoples and recognition by the States, the latter following the former, in light of established international criteria. Such a broad definition does not need to be uniform for indigenous peoples of all continents; it may contain several parts, parts applying to continents with the history of permanent European settlements, and parts to those continents that either experienced no colonization, or experienced non-permanent European colonization or colonization of a different kind.

IV. IS IT ABOUT DEFINITION? : INDIGENOUS PEOPLES' RIGHTS AS "DANGEROUS CLAIMS"

In a deep analysis of the reluctance of Afro-Asian States to recognize indigenous peoples will reveal that it is not theoretical or definitional puzzles that make these States nervous, rather it is the set of rights that indigenous peoples claim that make them sensitive to indigenous question. Indigenous peoples claim to have some unique rights: right to self-determination and autonomy, right to lands and resources that they have historically owned and enjoyed, and right to political participation and consultation prior to any decision taken regarding their lands. These rights are unique to indigenous peoples; and governments in Asia and African formed by dominant peoples are not ready to respond to the just demands of the indigenous peoples since these rights demand disruption of status quo and something more than mere non-discrimination. Even it is a possibility that the definitional puzzles are themselves motivated by these

governments' "unwillingness and inability to recognize the most fundamental of indigenous people's claims—having the right to self-determination and autonomy."[77]

A. Right to Self-Determination

Many of the States that feel discomfort about recognizing indigenous peoples seem to have in their minds the right to self determination that indigenous peoples demand with reference to their history of self-governance and historic connection to their lands, and the UNDRIP mentions such a right in Article 3. It goes, "indigenous peoples have right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 4 continues, "[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."[78] The declaration also entitles indigenous peoples to "the right to maintain and develop their political, economic and social systems or institutions."[79]

Such a clear mentioning of the right to self-determination for indigenous peoples is a big improvement in international indigenous rights norm setting, given that the ILO Convention No. 107 and 169 did not mention this right. Though the ILO Convention no. 169 have mentioned other important self-determining rights, like the right to be decide their own priorities in development, the absence of the right to self-determination in specific reflected doubts and fears of the independent countries about this right.

States often misinterpret right to self-determination as a right to secession, unreflective of the fact that the current international legal order is deeply embedded with the principle of territorial integrity of independent states. After mentioning the

friendly relation based on principle of self-determination as a purpose of the United Nations in Article 1, Article 2 of the UN Charter emphasizes on the principle of territorial integrity. This suggests that self-determination has been understood, in international law, to be applicable in most of the cases within the boundary of states. The General Assembly Declaration on Principles of International Law has also clarified the limited scope of the principle of self-determination in the following words: The principle of self-determination cannot be interpreted "as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and

Page: 35

independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples."[80]

Moreover, there are thousands of indigenous groups around the world; self determination in the sense of secession would create thousands of states, which is not possible in the present reality of the world order. So, the scope of the rights to self-determination as it is understood in common usage in international law is limited to its internal dimension only. The UNDRIP has clearly emphasized on the autonomy of indigenous peoples as the focused meaning of their right to self-determination. Patrick Macklem has succinctly summarized what self-determination for indigenous peoples mean in the following words,

The indigenous rights enshrined in the declaration, like those in Convention No. 107 and 169 presuppose complex and extensive relations between indigenous peoples and the States in which they are located. They do not entitle indigenous peoples to acquire sovereign power as of right. They do not vest sovereignty in indigenous peoples, as sovereignty is understood in international law. Instead, international indigenous rights vest in indigenous peoples because international law vests sovereignty in States.[81]

During the UNDRIP preparatory sessions, governments demanded a clear statement in the draft to the effect that the term was used only to mean internal self-determination. Indigenous groups refused to include such a qualification, arguing that other documents that mention the right to self-determination, ICCPR and ICESCR, do not contain such clarification and delimitation.[82] So, although self-determination is generally understood to signify mostly its internal aspect only, its external aspect is not altogether cancelled as a possibility, especially when in many Asian and African states, indigenous peoples live in a colonial-like situation. Indigenous peoples argue that, on the one hand, the state boundaries were arbitrarily imposed upon them; on the other hand, they are still living in continuous domination and subjugation, which is a form of colonization.[83]

Milton Bluehouse noted that the real fear of the states should be focused on the lack of human rights of indigenous peoples, which can disrupt territorial integrity. Providing indigenous peoples with all their just rights,

Page: 36

including their right to self-determination, will rather safeguard peace and territorial integrity of the independent states.[84]

B. Autonomy and Self-Governance

The above-mentioned discussion on self-determination demonstrates that due to the limited scope of application of the term, the best possible option available, within the framework of present world order, is that of autonomy and self-governance. Article 4 states, "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means of financing their autonomous functions." While autonomous indigenous self-governance system is available in the USA and Canada, Afro-Asian countries have not yet yielded to this paradigm of sharing sovereignty beyond strict federalism.[85]

Self-governance of the indigenous peoples signify that indigenous peoples have their own laws, mostly customary laws, and court system. In *Awas Tingni case*, the Inter-American Court of Human Rights recognized customary laws and practices as valid system of law that can determine ownership of indigenous lands according to its own system.[86] The Court even directed that the demarcation of indigenous lands be done in accordance with customary law, rather than the dominant law of the land.[87]

Indigenous peoples have long tradition of administering justice and enact regulations and laws for their territories. But the exclusive nationalism of States often prompts them to deny the diversity of indigenous self-governance system. Sovereignty, as it is understood in the Schmittian sense, provides states to decide on what law is and what law is not.[88] In this process, many colonial and post-colonial states denied recognizing customary laws and practices of indigenous peoples though they were established system of laws for centuries in indigenous homelands.

The concept of exclusive system of sovereignty has been changing, *inter alia*, through international human rights instruments, like the UNDRIP,

that has taken note of the history of the indigenous self-government system, and endorsed the principle of autonomy and self-governance, and customary laws and court systems. Such renewed endorsement to the old system of self-governance will help indigenous peoples realize their economic, social and cultural goals. Many indigenous groups around the world have "retained de facto and de jure autonomous institutions from previous eras."[89] In the United States, for example, indigenous self-governance along with indigenous written codes and court system is de jure recognized and co-exist vis-à-vis dominant governance systems.[90]

Countries in Asia and Africa might fear that autonomy will give indigenous peoples added strength is claiming independence. The practice of self-governance in many indigenous communities in the world proves the opposite. Autonomy provides indigenous peoples a sense of inclusion and recognition, which in turn help dominant nation in establish peace and harmony in the country. Whereas sharing power in federalist constitutional system is nothing new and its extension to indigenous peoples and acknowledging their autonomous self-governance system just requires extension of our imagination about constitutionalism and sovereignty, such recognition pays off immensely in terms of a country's image as a democratic and multi-cultural one.

C. Right to Land and Natural Resources

Another indigenous human right that Afro-Asian countries fear the most is indigenous peoples' historic land rights. Extensive land rights, enshrined in the ILO Conventions and the UNDRIP for indigenous peoples, have generated in Afro-Asian countries a fear that indigenous peoples who were illegally dispossessed of their lands would now claim their lands, thereby disrupting the status quo of the current land

settlements.

Right to use one's land is a normal human right, as enshrined in the Universal Declaration of Human Rights.[91] The uniqueness of indigenous right to land and natural resources lies in the recognition that indigenous peoples have historically owned their lands in a different way than the Anglo-American conception of land ownership is understood. Whereas Anglo-American ownership emphasizes on title deeds, indigenous ownership is based on holding, acquiring, using and working on lands.[92] Unlike

Page: 38

other vulnerable groups or national minorities, indigenous groups can prove their "historical, national, religious, and cultural relationship with their native land."[93] In most of the cases, indigenous peoples own lands in common without formal distribution and rigid demarcation of boundaries. Enjoyment of many indigenous rights is dependent on their lands, such as their religious and cultural ceremonies, and also their right to self-governance.

The UNDRIP and the ILO Conventions extensively dealt with the distinctive land rights of the indigenous peoples. Article 26 of the UNDRIP acknowledges the right of indigenous peoples "to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." The article also asks states to recognize such land tenure system. Article 28 emphasizes on the restitution of lands, territories and resources that have been taken away from indigenous peoples; and it is only when such restitution is impossible that just, fair and equitable compensation will be provided to them as a redress.

Similarly, Article 14(1) of the ILO Convention No. 169 states, "The rights of ownership and possession of indigenous peoples over the lands which they traditionally occupy shall be recognized." Further, Article 15 requires states to safeguard indigenous peoples' right to natural resources in their territories, and the right to use, manage and conserve those resources. Article 16 protects indigenous peoples from undue relocation without their consent. And even when so relocated with their consent, their right to return in their lands is to be ensured. In case of sheer impossibility so to return, they must be properly compensated.

The above mentioned rights bar independent states from arbitrarily acquiring indigenous lands and dispossessing indigenous peoples. The growing acceptance of indigenous land rights have also been reflected in the decisions of different international and regional human rights bodies.[94] For example, in the case of the *Mayagna (Sumo) Awas Tingni Community* v. *Nicaragua*,[95] the Inter-American Court of Human Rights holds that the concept of property includes "the communal property of indigenous peoples, even if that property is not held under a deed of title or is not otherwise specifically recognized by the state."[96]

In the face of extensive obligations arising from international human rights instruments, that ranges from corrective justice to restorative justice,

Page: 39

affirmative action to historic apologies, and compensations to distributive justice, states shy away from ratifying the ILO Convention and endorsing the UNDRIP.

D. Consultation and Consent

Another very important and exceptional right solicited by indigenous peoples, but feared by Afro-Asian governments, is right to be consulted before taking any decision that potentially can affect indigenous peoples. Deriving from the principle of self-determination, this right reflects the historical fact that decisions on lands and resources of indigenous peoples are often imposed on indigenous peoples without their consent. The requirement of consultation and consent bars nation-states from asserting their unlimited sovereignty over indigenous peoples, and therefore, hegemonic States who are habituated to see indigenous peoples as an object of developmental decisions rather than as subjects in the decision-making process often do not appreciate this right.

The right of consultation and consent was first recognized in the ILO Convention 169, and was further extended in the UNDRIP. Article 6 of the ILO Convention 169 requires governments to "[c]onsult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."[97] Especially in case of any decision regarding minerals and other sub-surface resources, "governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands."[98] Indigenous peoples also have the right to participate in any decision making that is pertained to the development that affects "their lives, beliefs, institutions and spiritual well-being".[99]

Similarly, the UNDRIP has elaborately catalogued the right of consultation and participation in the decision-making process regarding elimination of discrimination and promoting tolerance,[100] in protecting children's welfare,[101] in using indigenous land and territory for military purposes[102] etc. The declaration emphasizes not merely on consultation and participation, rather it stipulates that the consent of the indigenous peoples in the

consultation process must be achieved in a free, prior and informed manner. Article 10 affirms that indigenous peoples cannot be dispossessed or relocated from their lands "without the free, prior and informed consent" or without "agreement on just and fair compensation and, where possible, with the option of return."[103] Article 11 provides that adequate redress must be offered to them if any intellectual, cultural, religious and spiritual property has been taken away "without their free, prior and informed consent or in violation of their laws, traditions and customs."[104] Article 18 Article 19 makes it a duty of the State that it consults "in good faith" with indigenous peoples "in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[105] The Declaration also acknowledges the right to be consulted in case of taking any decisions that may affect indigenous peoples' lands, territories and resources,[106] and regarding storage or disposal of any hazardous waste or materials.[107]

Consultation and participation, or the process of achieving free, prior and informed consent of the indigenous peoples, as mentioned above, "implies more than mere superficial consultation."[108] It must not be a mere process of informing indigenous peoples about the decision already taken by the government to be imposed upon indigenous peoples. The consultation must be objective and meaningful, and must be

"crafted to allow indigenous peoples the genuine opportunity to influence the decisions that affect their interests."[109]

But in reality, governments in Asia and Africa do not consult with, let alone take free consent of, indigenous peoples. Benedict Kingsbury's words best expresses the scenario:

> There remains, in Asia as elsewhere, a gulf between the self-identification advocated by indigenous peoples in the United Nations—or even the doctrines of consultation, participation and choice espoused in some international institutions—and the actual experiences of indigenous peoples with externally driven development and conservation.[110]

Countries in Asia and Africa need to understand that ensuring consultation and participation of indigenous peoples protects interests of the dominant society as well. If indigenous interests are reflected in the policies of these countries, peace and stability would be easier to achieve than when indigenous voices are not heard. Consultation and participation are the good democratic channel to give vent to indigenous sufferings and angst. The enduring presence of indigenous peoples despite all the suffering and genocide proves that they are here to stay, and it is better to hear them.

V. WHY BANGLADESH SHOULD RECOGNIZE INDIGENOUS PEOPLES' IDENTITY AND RIGHTS CONSTITUTIONALLY

As we have mentioned in the introduction, Bangladesh government has summarily rejected recognizing indigenous peoples of the CHT in the constitution. By stating that "the peoples of Bangladesh shall be known as Bangalees as a nation," Bangladesh constitution has virtually denied existence of other peoples that do exist within its boundary.[111] Article 23 A seemingly distinguishes Bangalees, the dominant nation, and the "tribes, minor races, ethnic sects and communities"[112] as a category of nation. By categorizing indigenous peoples of the CHT—who are not Bangalees—as "tribes or minors races"—pejorative terms in Bengali culture, the government has exposed its hegemonic mentality and assimilationist attitude. Such attitudes of non-recognition of indigenous peoples with dignity has led indigenous peoples of the CHT to their struggle for autonomy, which started with constitutional demand for autonomy, but, following a failure to achieve recognition through peaceful protests, turned into non-constitutional protests in the form of armed resistance for more than two decades.[113]

Experts on the indigenous issue of the CHT think that in view of the historical fact that "the CHT always had a wholly or partially autonomous status in law and in practice, from the colonial period until today," the government of Bangladesh during the post-independent Bangladesh "could have easily accommodated the autonomy demands of the CHT people, as it did, at least partially, in 1997. History would thereby have spared the unnecessary violence and gross human rights violations that plagued the region the last few decades."[114] The following discussion reveals the constitutional

history of indigenous peoples of the CHT that bears testimony to the distinct identity of the indigenous peoples of the CHT and their special constitutional status as

autonomous self-governing peoples.

A. The CHT as the Home of Indigenous Peoples

Bangladesh government recognizes indigenous peoples of the CHT as "ethnic minority" or "tribal" people, though not as indigenous. In spite of the definitional controversy at international level regarding the criteria of indigenousness, there are some agreed upon criteria over which little or no controversy exists. They are prior presence, colonial experience, intention to maintain distinct culture. All these elements are present in case of the indigenous peoples of the CHT.

The CHT is home to 11 ethnic groups who are ethnically distinct from the rest of Bangladesh. Their language, religion, culture and history are different to those of the dominant Bengali peoples. Whereas the majority Bengali peoples speak Bengali and other Indo-Aryan languages, indigenous CHT peoples speak languages more akin to Tibeto-Burman groups.[115] Most of the indigenous peoples in the CHT profess Buddhism while majority Bengali peoples profess Islam. Even the topography and cultivation culture of the CHT are very different. The indigenous peoples of the CHT traditionally depend on swidden cultivation or slash and burn, popularly known as jhum cultivation in the CHT. Because of this culture of jhum cultivation, which is common to all indigenous groups in the CHT, some indigenous peoples prefer to refer themselves as "Jumma Peoples."[116] These features confirm their distinct ethnic identity, and form the bedrocks of these peoples claim for indigenous status.

The tribal population of the CHT lived in this hilly region for several hundred years, which according to the recorded history can be traced back to 1550.[117] Bengali speaking peoples started permanently living in the Chittagong Hill Tracts only since the 19th century, though they had visited the region for trade purposes since before.[118] The CHT peoples were "recognized as "indigenous" to the region by the CHT Regulation of 1900 and Act

12 of 1995."[119] Rule 4 of the Regulation 1 of 1900 holds, "a Chakma, Mogh or member of any tribe [is] indigenous to the Hill Tracts." The Schedule of the regulation holds that the Income Tax Act concerned "shall apply to all persons in the Chittagong Hill Tracts except the indigenous Hillman."[120]

Various correspondences of the post-colonial state of Pakistan and Bangladesh have used the term "indigenous" or its equivalent local term. Since the CHT peoples are not claiming their status as indigenous to the whole territory of Bangladesh and do not question Bangalee's assertion that they came to the plains region of Bangladesh before adivasis of the CHT, there is no reason to fear the word "indigenous." Even when the term is accepted with all its ramifications, the CHT indigenous peoples' claims will not extend to the plains region where the Bangalees live.

The Prime Minister of Bangladesh and the opposition leader have used the term "*adivasi*," the Bengali equivalent of "indigenous" in their messages to the indigenous peoples of Bangladesh on the UN declared International Day of the World's Indigenous Peoples on August 9, 2003. Though both leaders have later on changed their policy in using the term, the fact remains that the history of distinct social, political and administrative systems of the indigenous peoples of the region, along with *de jure* and *de facto* recognition of their distinct entity, proves indigeneity of the CHT people.[121]

B. Constitutional History of the CHT

Unlike the plains area of Bengal that were under formalized empires and kingdom

for many centuries, the CHT remained a region with decentralized self-governing chiefdom, chieftaincies and tribal confederacies until both Bengal and the CHT fell under British colonization.[122] That means, the CHT during its colonization by the British imperialists was not a part of the plains of Bengal, though both fell prey to the same colonizer and became undivided parts of the British Empire. The CHT became a part of British colonial role as late as in 1860, whereas the colonization of the plains of Bengal happened as early as 1757. Another important difference between the two regions had to do with the administrative system: while

the former became directly under British Crown's formal laws and administrative system, the latter was allowed to maintain a system of quasi-formalized, quasi-traditional "self-government system, in which the primacy of the indigenous groups were highlighted, and such self-government system was enjoyed by the CHT till the end of colonial rule."[123]

During the decolonization of Indian Sub-continent in 1947, the CHT wanted to become a sovereign "native state" as it was before British colonization, or a confederation with some non-Muslim parts of present India. Without heeding to this demand, and totally anomalous to the principle of two-nation theory, which was the main theory behind the formation of two different independent countries of India and Pakistan based on majority's religious affiliation in a particular district, the CHT was allotted to Pakistan though its Muslim population was very low.[124]

In the newly formed post-colonial constitution of 1962, the special self-governing status was recognized terming the CHT as "tribal area" soon to be abolished in 1963.[125] In spite of repeated appeals by the indigenous peoples, the special administrative status was not revived until the country itself was broken, the erstwhile East Pakistan was now forming the country of Bangladesh, the CHT being a part of it.

It is an interesting fact of the history that it was not only the CHT indigenous peoples that suffered under the hegemonic military-bureaucratic governmentality of Pakistan; the Majority Bangalees of the East Pakistan also suffered all kinds of economic, cultural and political exploitation at the hands of West Pakistan.[126] Ironically, Bangalees of East Pakistan mainly started its struggle against West Pakistan for provincial autonomy though it ended up having a war of independence fought and won, and thereby establishing the independent Bangladesh, where they are now in a position of domination. Soon after the independence, in the process of constitution making, indigenous peoples of the CHT demanded autonomy and the revival of their self-government status, very akin to Bangalees' demands for autonomy from hegemonic West Pakistan. History repeated here partially; the indigenous peoples constitutional demand autonomy being dismissed, they started armed struggle against Bangladesh that continued till 1997, when the government of Bangladesh and indigenous peoples' political organization Parbatya Chattagram Jana Samhati Samiti reached a treaty in 1997, known as the CHT Peace Accord, establishing the CHT Regional

Council, thereby partially reviving the special self-governing status of the CHT.[127]

C. Constitutional Recognition Is Still Being Denied

Though the special administrative status was revived partially, the government is not ready to recognize indigenous peoples constitutionally. Even the Peace Accord avoided using the term "indigenous," and instead, used the word "tribal" in referring to the Jumma peoples, as Article 1 of the Accord states, "Both sides agree to treat the CHT as the tribal inhabited region." Though the terms indigenous and tribal are often used interchangeably, they have different connotations in international law.[128] One writer have aptly put it in the following words, "In the African context the designation "tribal" is so broad as to be almost meaningless, applying as it does to most groups within Africa. Similar concerns have led governments from Asian countries inhabited by tribal peoples to express their belief that the distinction is an important one.[129] Bangladesh's official position is that all tribal peoples are not indigenous, and the Jumma peoples are only tribal ethnic peoples, not indigenous.

In light of our discussion of the Jumma peoples' history, we find that they are not simply tribal peoples, they fulfil all the criteria of indigeneity that the existing working definition, say, Cobo's definition, demand. Their prior presence in the CHT region when the colonization happened, along with their cultural distinction and historical continuity up to the present day, justify their claim as indigenous. The only objection that can be validly raised against their indigeneity is interpretational, the interpretation of indigeneity as co-extensive with the territory of a state. Such an interpretation does not take into account of the historical fact that colonizing powers established their empire over big chunks of the continent containing various indigenous groups who came in their respective homelands prior to others. That the colonial boundary is now consolidated does not wipe out the history of each group's prior presence, which is the critical element of indigeneity in the highly demanding definitions of indigenousness.

Unfortunately, as colonization came to indigenous peoples and territories through various legal discourses that denied indigenous existence, for example, the doctrine of *terra nullius* and non-application of laws to uncivilized native peoples, so did decolonization come to them with all the legal discourses that deny revival of indigenous sovereignty. The principle

of *uti possedetis*, which means colonial boundaries must be respected, as enshrined in the UN General Assembly Resolution on the Granting of Independence to Colonial Countries,[130] and the blue-water principle of decolonization, which meant that decolonization will be allowed to those peoples only that were geographically distinct,[131] have confirmed that non-dominant indigenous peoples will be not only unable to decolonize themselves, but also their very identity as indigenous that would justify decolonization and independence, or alternatively, self-government, will be denied.

Bangladesh has taken advantage of these international legal principles that distribute sovereignty to legal entities called states,[132] and consolidated further by the principle of territorial integrity. Bangladesh has also taken advantage of the "unitary" structure of its constitution, which was adopted without taking indigenous peoples' history of self-government. During the Universal Periodic review of Bangladesh before the Human Rights Council in 2013, Bangladesh took the plea of its constitution by saying that "[a]s per the Constitution of Bangladesh, there are no 'indigenous minorities' or 'group' in Bangladesh. All citizens of the country are indigenous to the land."[133]

Bangladesh should not take the excuse of its constitutional system, instead, it should amend its constitution in light of the international indigenous human rights instruments and recognize indigenous identity, especially when Bangladesh has a history of struggle following similar denial by of their identity by the West Pakistani regime. One author has graphically framed this irony in the following words,

Is it not a strange mockery of history that the Bengalis who took to arms to establish their identity is now against a people who also resorted to the same struggle to regain the identity they have been privileged to enjoy for hundreds of years? Is not the stand taken by the Bengalis self-denying? Are they not denying the legitimacy of their own struggle which they waged to gain their political/cultural selfhood by suppressing remorselessly the movement of the Jummas for an entity of their own?[134]

In absence of constitutional recognition of indigenous rights and identity, the Peace Accord, which ended protracted period of the armed conflict in the region, will be vulnerable to constitutional challenges. Indeed, the Peace Accord was challenged in two Supreme Court cases, where the Supreme Court has declared the CHT Regional Council as totally unconstitutional and void.[135] So, constitutional non-recognition can vitiate the much-prized peace and stability in the region while such recognition will ensure the image of Bangladesh as peace-loving multi-cultural democratic country.

VI. CONCLUSION

Indigenous Jumma Peoples of the Chittagong Hill Tracts in Bangladesh have been demanding constitutional recognition of their identity for four decades now. The history of Jumma peoples demonstrate that they deserve to be so recognized. Bangladesh government has been denying, not unlike many other Afro-Asian countries, to recognize indigenous based on an argument of fear—the fear that recognizing Jumma peoples' identity as 'indigenous' will justify their secession from Bangladesh. Although self-determination is a right of indigenous peoples, it does not exclusively mean right of secession. In the present world order, self-determination is practiced more by way of self-government and autonomy rather than secession and independence. There cannot be thousands of independent countries as there are thousands of indigenous communities.

Through the Peace Accord of 1997, Bangladesh conceded limited self-government for the Jumma peoples, but in absence of constitutional recognition this promise is in serious threat of being diluted, which can in turn disrupt peace and stability of the region once again. A clear understanding of the term 'indigenous' and the rights guaranteed to the indigenous peoples by the international human rights instruments demonstrate that constitutional recognition will have the effect of ensuring dignity, respect and confidence of the indigenous peoples, which will be as much rewarding to the recognizing country as the indigenous peoples recognized.

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[1] For a complete account of the similar struggle of Bangalees for recognition of their just demands against Pakistani national leaders, *see* Moudud Ahmed, "Bangladesh: Constitutional Quest for Autonomy" (1950-1971), Dhaka: UPL (1991).

[2] Bangladesh Constituent Assembly Debate 1972, p. 20.

[3] *See* Art. 3 and Art. 6 of *The Constitution of the People's Republic of Bangladesh*.

[4] Amena Mohsin, "Militarization and human rights violations in the Chittagong Hill Tracts", Paper presented in the International Peace Conference on Chittagong Hill Tracts in Bangkok, 23-26 February, 1 (1997).

[5] Asia Pacific Forum on National Human Rights Institutions and the Office of the UNHCR, "The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions", 17 (2013).

[6] A/HRC/24/12/Add.1, p. 5.

[7] *The Daily Star*, "Ethnic Minority, Not Indigenous People", Front Page (July 27, 2011).

[8] Gozalo Aguilar, Sandra LaFosse, Hugo Rojas, Rebecca Steward, "The Constitutional Recognition of Indigenous Peoples in Latin America", 2 No. 2 Pace Int'l L. Rev. Online Companion, 51 (2010).

[9] *Ibid.*

[10] Will Kymlicka, "Theorizing Indigenous Rights", 49 U. Toronto L.J. 281, 283 (1999).

[11] *Ibid.*

[12] Dr. Javaid Rehman, "International Law and Indigenous Peoples: Definitional and Practical Problems", 3 J.C.L. 224, 229 (1998).

[13] Dr. Yousef T. Jabareen, "Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples", 18 U.C. Davis J. Int'l L. & Policy 119, 122-129 (2011-2012).

[14] *Ibid.*

[15] In Guatemala and Bolivia, indigenous peoples form the majority. *See* Rural Poverty Portal, Statistics and Key Facts about Indigenous Peoples, http://www.ruralpovertyportal.org (accessed November 28, 2013).

[16] Kamrul Hossain, "Status of Indigenous Peoples in International Law", Miskolc Journal of International Law, vol. 5, 10 (2008).

[17] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy", 92 Am. J. Int'l L. 414, 422 (1998).

[18] James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge University Press, 9 (1995).

[19] Kingsbury, *Supra note* 17, p. 426.

[20] *Ibid*., p. 436.

[21] Kymlicka, *Supra note* 10, pp. 285-286.

[22] Sidsel Saugestad, *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance, and the First People of the Kalahari*, 52 (2001).

[23] U.N. Doc. E/CN.4/WG.15/2 (1995).

[24] Benedict Anderson, *Introduction to Southeast Asian Tribal Groups and Ethnic Minorities*, 1, Cambridge, Mass. (1987).

[25] Amelia Cook and Jeremy Sarkin, "Who is Indigenous?: Indigenous Rights Globally, in Africa, and among the San in Botswana", 18 Tulane J. of Int'l & Comp. Law 93, 110-111 (2009-2010).

[26] Rehman, *Supra note* 12, p. 238.

[27] Among the 11 countries abstaining, 7 were Afro-Asian countries. Bangladesh is one of them.

[28] They are Botswana, Namibia and Nigeria. *See* Jan Hoffman French, "The Power of Definition: Brazil's Contribution to Universal Concepts of Indigeneity", 18 Ind. J. Global Legal Stud. 241, 244 (Winter 2011).

[29] Kingsbury, *Supra note* 17, p. 417.

[30] E/CN.4/Sub.2/AC.4/1996/2, GE. 96-12980 (E), 10 June 1996, para 39.

[31] Among those countries that shifted attitudes towards recognition are: Canada, (to some extent) Australia, New Zealand, Brazil, Bolivia, Mexico, Guatemala, Japan, Philippines, Malaysia, etc.

[32] "Discussion on the Concept of Indigeneity", 14 Soc. Anthropology, 17 (2006) pp. 21-22 (Comments of Adam Kuper).

[33] Kingsbury, *Supra note* 17, p. 435. *See* the argument of India before the UN Working Group on Indigenous Peoples (July 31, 1991).

[34] Adam Kuper, "The Return of the Native", 44 Current Anthropology 389, 392 (2003).

[35] Kingsbury, *Supra note* 17, p. 435. *See* also, Donald L. Horowitz, *Ethnic Groups in Conflict* 201-216 (1985).

[36] *Ibid.*

[37] ECOSOC, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Final Report: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations, U.N. Doc. E/CN.4/Sub.2/1999/20, 91 (June 22, 1999).

[38] Cook & Sarkin, *Supra note* 25, p. 110.

[39] Kingsbury, *Supra note* 17, p. 422.

[40] Rehman, *Supra note* 12, p. 228.

[41] Special Rapporteur José R. Martiínez Cobo, "Study of the Problem of Discrimination against Indigenous Populations", U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, paras 379-380.

[42] Kingsbury, *Supra note* 17, p. 420.

[43] *Ibid*., p. 418.

[44] *Ibid*., p. 434.

[45] Department of Economic and Social Affairs, Secretariat of the Permanent Forum on Indigenous Issues, State of the World's Indigenous Peoples, United Nations: New York, 6 (2009).

[46] Dr. Yousef T. Jabareen, "Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples", 18 U.C. Davis J. Int'l L. & Pol'y 119, 129 (2011-2012).

[47] Kingsbury, *Supra note* 17, p. 455.

[48] *Ibid*., pp. 454-5.

[49] Patrick Macklem, "Indigenous Recognition in International Law: Theoretical Observations", 30 Mich. J. Int'l L. 177, 207 (Fall 2008).

[50] Bangladesh ratified the ILO Convention No. 107 on Indigenous and Tribal Populations in 1972, and is under an obligation to implement its provisions. Of course, the country did not ratify the ILO Convention No. 169.

[51] In this definition, cultural continuity is an important factor.

[52] Macklem, *Supra note* 49, p. 191.

[53] Julie Debeljak, "Barriers to the Recognition of Indigenous Peoples' Human Rights at the United Nations", 26 Monash U.L. Rev. 159, 160 (2000).

[54] Raja Devasish Roy, The ILO Convention on Indigenous and Tribal Populations, 1957 [No. 107] and the Laws of Bangladesh: A Comparative Review, PRO 169, International Labour Standard Department, ILO Geneva and the ILO Office in Dhaka, 2 (2009).

[55] Though the indigenous peoples suffered a different kind of conquest and/or colonization not less traumatic than the European colonization.

[56] Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, to the General Assembly in its Sixty-Eighth Session (August 24, 2013), A/68/317, paras 62-66.

[57] Hossain, *Supra note* 16, p. 14.

[58] Karin Lehmann, "To Define or Not to Define — the Definitional Debate Revisited", 31 Am. Indian L. Rev. 509, 525 (2006-2007). African indigenous peoples, for example, argued during the WGIP session in 1999 that they

"were the most vulnerable peoples in the United Nations structure. They were marginalized, and indigenous peoples of Africa in particular faced difficulties in gaining a voice in international forums". *See* ECOSOC, Working Group on Indigenous Populations, Prevention of Discrimination and Protection of Indigenous Peoples: Report of the Working Groups on Indigenous Populations on its Twentieth Session, 42, U.N. Doc. E/CN.4/Sub.2/2002/24 (August 8, 2002).

[59] ECOSOC, Working Group on indigenous Populations, Human Rights of Indigenous Populations: Report of the Working Group on Indigenous Populations on its Fifteenth Session, U.N. Doc. E/Cn.4/Sub.2/1997/14 (August 13, 1997).

[60] Kingsbury, *Supra note* 17, p. 414.

[61] *Ibid.*

[62] Debeljak, *Supra note* 53, p. 183.

[63] Kingsbury, *Supra note* 17, p. 421.

[64] Lehmann, *Supra note* 58, p. 524.

[65] Kingsbury, *Supra note* 17, 441.

[66] Macklem, *Supra note* 49, p. 196.

[67] *Ibid.*

[68] Lehmann, *Supra note* 58, p. 515.

[69] *Ibid.*

[70] Asian and African countries consistently claim that the distinction between the terms "indigenous" and "tribal" are important one. They maintain that all tribal peoples are not indigenous peoples, and vice versa. *See*, ECOSOC, Working Group on Indigenous Populations, Discrimination against Indigenous Peoples: Report of the Worknig Groups on Indigenous Populations on its Fourteenth Session, 37, U.N. Doc. E/CN.4/Sub.2/AC.4/1996/21 (August 16, 1996).

[71] Lehmann, *Supra note* 58, p. 523.

[72] Macklem, *Supra note* 49, p. 203.

[73] ECOSOC, Working Group on Indigenous Populations, Discrimination against Indigenous Peoples: Report of the Working Group on Indigenous Populations on its Thirteenth Session, 41-43, U.N. Doc. E/Cn.4/Sub.2/1995/24 (August 10, 1995).

[74] Kuper *Supra note* 34, p. 112.

[75] Kingsbury, *Supra note* 17, p. 457.

[76] Macklem, *Supra note* 49, p. 205.

[77] Rehman, *Supra note* 12, p. 225.

[78] G.A. Res. 61/295, U.N. Doc. A/RES/61/295, Art. 4 (September 13, 2007).

[79] *Ibid*, Art. 20(1).

[80] G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (1970).

[81] Macklem, *Supra note* 49, p. 203.

[82] Debeljak, *Supra note* 53, p. 173.

[83] R. Yazzie of the Navajo Nation Human Rights Commission, "Self-Determination" (Statement made in the fourth open-ended inter-sessional WGDD, December 8, 1998).

[84] Debeljak, *Supra note* 53, p. 174; Milton Bluehouse of the Navajo Navajo Nation, *Self-determination* (Statement made in the fourth open-ended inter-sessional WGDD, December 8, 1998).

[85] By "strict federalism" I mean the constitutional principle that only states or provinces can claim the share of sovereign power. No other groups can claim self-governance.

[86] S. James Anaya, "International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State", 21 Ariz. J. Int'l & Comp. L. 13, 48 (2004).

[87] *Ibid.*

[88] Schmitt's book starts with the sentence: "Sovereign is he who decides on the exception." Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, George Schwab (trans.), Chicago: University of Chicago Press, 5 (2005).

[89] Anaya, *Supra note* 86, p. 51.

[90] *Ibid*., p. 49.

[91] Art. 17 of the Universal Declaration of Human Rights states, "Everyone has the right to own property alone as well as in association with others", and "no one can be arbitrarily deprived of his property". G.A. Res. 217 A (III) (December 10, 1948), Art. 17.

[92] René Kuppe, "The Three Dimensions of the Rights of Indigenous Peoples", 1(1) Int'l Comm. L. Rev. 103, 107 (2009).

[93] Jabareen, *Supra note* 13, p. 142.

[94] Anaya, *Supra note* 86, p. 42.

[95] Inter-Am. Court H.R. (Ser. C) No.79 (Judgment on merit and reparations of August 31, 2001), in 19 Ariz. J. Int'l & Comp. L. 395 (2002).

[96] Anaya, *Supra note* 86, p. 42.

[97] ILO Convention No. 169, Art. 6(1)(a).

[98] *Ibid*., Art. 15(2).

[99] *Ibid.*, Art. 7.

[100] UNDRIP, Art. 15(2).

[101] *Ibid.*, Art. 17(2).

[102] *Ibid*., Art. 30(2).

[103] UNDRIP, Art. 10.

[104] *Ibid*., 11(2).

[105] *Ibid.*, Art. 19.

[106] *Ibid*., Art. 32(2).

[107] *Ibid*., Art. 29(2).

[108] Aguilar, LaFosse, Rojas & Steward, *Supra note* 8, p. 68.

[109] Special Rapporteur Anaya, *Supra note* 56, p. 55.

[110] Kingsbury, *Supra note* 17, p. 440.

[111] Art. 6 of the Constitution of the Peoples' Republic of Bangladesh.

[112] Art. 23-A of Bangladesh Constitution.

[113] Bhumitra Chakma, "Bound to be Failed: The 1997 Chittagong Hill Tract Peace Accord", Nasir Uddin (eds.) "Politics of Peace: A Case of the Chittagong Hill Tracts in Bangladesh", Dhaka: ICDR 121, 125 (2012).

[114] Devasish Roy, "Challenges towards the Implementation of the Chittagong Hill Tracts Accord of 1997", Nasir Uddin (eds.) "Politics of Peace: A Case of the Chittagong Hill Tracts in Bangladesh", Dhaka: ICDR 70, 112 (2012).

[115] *Ibid.*, p. 71.

[116] Raja Devasish Roy, "Land and Forest Rights in the Chittagong Hill Tracts", Kathmandu: ICIMOD, p. 7 (July 2002)

[117] *The CHT Regional Council, Parbatya Chattagram Ain Shanhita (The Code of the CHT Laws)*, The CHTRC, Preface (2010). *See* also, M.Q. Zaman, "Crisis in Chittagong Hill Tracts: Ethnicity and Integration", Economic and Political Weekly, vol. 17, no. 3, p. 76 (1982).

[118] Raja Devasish Roy and Pratikar Chakma, "The Chittagong Hill Tracts Accord & Provisions on Lands, Territories, Resources and Customary Law", in *Hope and Despair: Indigenous Jumma Peoples Speak on the Chittagong Hill Tracts Peace Accord*, Tebtebba (2010), p. 116.

[119] Raja Devasish Roy, "Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh", 21 Ariz. J. Int'l & Comp. L. 113, 115, Footnote 4, (2004). R. 4 of the Regn. 1 of 1900 holds, "a Chakma, Mogh or member of any tribe [is] indigenous to the Hill Tracts".

[120] Rajkumari Chandra Kalindi Roy, *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh*, IWGIA Document No. 99 Copenhagen, IWGIA, 22 (2000).

[121] Bhumitra Chakma, "The Post-Colonial State and Minorities: Ethnocide in the Chittagong Hill Tracts, Bangladesh", Commonwealth and Comparative Politics, vol. 48, no. 3, 281, 283 (2010).

[122] Roy, *Supra note* 119, p. 117.

[123] Roy, *Supra note* 114, p. 77.

[124] Chakma, *Supra note* 113, p. 123.

[125] Roy, *Supra note* 119, p. 118.

[126] For an excellent account of that history of exploitation and Bangalees' resistance movement and ultimately war of independence, *see* Moudud Ahmed, "Bangladesh: Constitutional Quest for Autonomy (1950-1971)", (Dhaka: UPL, 1991).

[127] Roy, *Supra note* 119, p. 119.

[128] The official position of the Working Group on Indigenous Peoples is that "the UN Practice of treating the two as synonymous is well established that it will not change". See, *Supra note* 57, p. 516.

[129] Lehmann, *Supra note* 58, p. 516.

[130] G.A. Res. 1514 (XV) (1960).

[131] Rehman, *Supra note* 12, p. 231.

[132] Macklem, *Supra note* 49, p. 210.

[133] A/HRC/24/12/Add.1, 5 (23 July, 2013).

[134] Prof. Mong Shanoo Chowdhury, "An Appraisal of the Peace Accord and the Political Institutions in the Chittagong Hill Tracts", in *Hope and Despair: Indigenous Jumma Peoples Speak on the Chittagong Hill Tracts Peace Accord*, Tebtebba, 1, 113 (2010).

[135] *Mohd. Badiuzzaman* v. *Bangladesh*, (2010) 7 LG (HCD) 208 and *Md. Tajul Islam* v. *Bangladesh* (Writ Petition No. 6451 of 2007).