

Land Rights, Women and Indigenous Peoples

Indigenous women face multiple discrimination. Simply by being women, they are already at a disadvantage. This disadvantage is exacerbated by being indigenous or *adivasi*. The biggest challenge is reflected in the reality that men are not reaching their self-determination, let alone women, resulting in a mindset that self-determination for IPs should be pursued first. However, the struggle to realise self-determination for IPs must be taken in parallel with the struggle for indigenous women's self-determination. Otherwise, the goal of self-determination cannot be achieved.

IP Land Rights under International Law

- Recognition of Traditional and Other Land Rights on Ownership, Use and Occupation
- Right to Restitution and Compensation
- Right to Efficacious Remedies in accordance with Customary Regimes
- Safeguards against Land Alienation

Bangladesh, India and Pakistan have ratified the ILO Convention on

Indigenous and Tribal Populations No. 107, while Nepal has ratified the more progressive Convention No. 169. Both ILO conventions and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognise traditional and other land rights of ownership, use, occupation; and the right to restitution and compensation.

The UN Declaration does not create a new law. It is a declaration, not a treaty. What it does is reinterpret, with examples, those rights that apply to indigenous peoples. "Indigenous peoples," given that no formal definition exists, are those who had no role in designing the architecture of the modern state. Nor did they have a role in drafting the constitutions – not even a comma or semi-colon. Because of the historical process of exclusion and structured discrimination by the state – IP cannot realise those rights, which they should otherwise be exercising as citizens, but forgetting their ethnic (and other) identity. IPs are still struggling to redesign the state, but with generally little success.

IPs, as opposed to other peoples, practise customary law and have traditional institutions. Whether or not these leaders from IP groups are recognised by the state or not is the question. This

Barrister Devasish Roy, appointed as a member of the United Nations Permanent Forum on Indigenous Issues, offers snapshots of some of the challenges facing indigenous peoples (IPs), especially women, with a focus on Bangladesh. Using a legal lens, he identifies the opportunities available for IPs to secure their land rights. He summarises IP land rights under international and Bangladeshi law and reviews the status of indigenous women. Insightful and candid, this article makes the case for de-gendering the land rights regime as well as for representation and self-government for indigenous peoples.

Barrister Roy describes himself as merely "a foot soldier in the struggles to achieve indigenous peoples' rights, minorities' rights, human rights, and women's rights."

UN Declaration on the Rights of Indigenous Peoples

ARTICLE 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

ARTICLE 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

ILO Convention on Indigenous and Tribal Populations Convention No. 107 of 1957

ARTICLE 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized.

is particularly the case due to the fact that *adivasi* representation in elective forms of local government is low.

It seems that in every major country in the world, indigenous peoples have derived little benefit from national majority ruling political parties. IPs have not been able to properly engage in the political and electoral system, with its machinery of money, muscle, contacts, and companies. Indigenous peoples' numbers in the plains are so low that they get very few leaders elected to the different tiers of local government. In fact, one of the demands in the ongoing debate on constitutional recognition of indigenous peoples is reserved seats for them. India has reserved seats in both Houses of Parliament for Scheduled Tribes and Scheduled Castes.

Moreover, come election time, remaining indigenous by ethnicity is a problem. I always jokingly say, that even if there are elections tomorrow in district and regional councils, everybody is going to try to dance to the tune of the majority group. Nobody is going to do the jute or bamboo dance, because politics is about money and campaign funds. That is where we have to really try to restructure governance, participation and decision-making, beyond the so-called democratic system, which is really not democracy; rather it is majoritarianism. It is a numbers game.

A deputy commissioner is not an elected person, but neither are we traditional. *Those elected are not necessarily the only ones representing the people.* A study

conducted by the International Work Group for Indigenous Affairs conveyed one message loudly and clearly: indigenous peoples, political parties, and elections—one gets the worst out of them. The first priority is to get elected. Unless and until indigenous peoples can find ways to deal with this system, their voices will not be heard.

How do we get remedies under international law, when there are dysfunctions within the system itself? *International human rights law has no teeth.*

Nepal's treaty law prevails over its Constitutional law, as with some Latin American countries,¹ and unlike Bangladesh, India or Pakistan. This means that one cannot simply invoke the ILO Convention, for instance, in the Supreme Court of Bangladesh. And although Nepal is faced with many such opportunities, it is weighed by many problems. The future of *Adivasi Janajati*² rights is uncertain. Such difficulties are compounded by the fact that indigenous peoples – especially indigenous women – still need to build capacity and increase synergies with other organisational networks that are fighting to mainstream indigenous women's rights into the overall struggle for indigenous peoples. *That is the crux of the problem.*

¹ This is guaranteed by the Nepal Treaties Act, 2047 (1990). Under the Nepal Treaties Act, 2047 (1990), in case of divergence between the provisions of Nepalese law and provisions of an international treaty to which the Kingdom is a party, the provision of the treaty shall apply.

² *Adivasi Janajati* or indigenous peoples nationalities is a movement in Nepal that has advocated for greater inclusion of IPs in development.

The ILO Conventions and the UNDRIP provide safeguards against land alienation gain the ILO conventions.

Article 27 of the UNDRIP recognises the rights of IPs. The UNDRIP, amongst other things, also states that IP rights must be recognised, and that these rights must be adjudicated fairly and expeditiously.

Theoretically, the Bangladesh Land Disputes Resolution Commission would be a model for other countries, owing to its inclusive process. The majority members of the Commission are indigenous leaders. The Commission does not have to follow complex civil procedure; it does not need lawyers. But its rulings enjoy the full powers of a civil court; thus government executives must carry them out. In addition, the Commission has to account for customary law. Hopefully, this will come soon.

ILO Convention 107 makes provisions on the ownership rights – collective or individual – of the members of the population concerned over lands they have traditionally occupied. Moreover, one of the UNDRIP articles mentions that these rights apply to both collectives and individuals, to women as well as men. These international laws, read with other provisions of non-discrimination, for example, CEDAW and national constitutions, which always have contained fine albeit unimplemented provisions on women's rights, can be invoked.

Article 34 of the UNDRIP recognises indigenous people's customary laws,

traditional systems, and juridical systems³. However, one of the greatest challenges confronting customary law is "accordance with international human rights standards."

Now, on the one hand, *customary law is a law indigenous communities have control over*. The Chief Justice of Bangladesh cannot be the one to say what is IPs' customary law. Thankfully, the Bangladeshi system does recognise customary and personal law; the State does not impose. On the other hand, the issue is whether or not we can and should have a uniform family code of application across the religious-ethnic divide. That struggle is extremely difficult.

Religious conservatism is a sensitive topic, one which poses as another challenge to women's and indigenous communities' rights. Unfortunately, religious conservatism has unfortunately led to an impasse. A uniform family code cannot be enacted without Muslims invoking Shari'a. A Bangladeshi Parliament, being a Muslim-majority country, will dare not touch Shari'a or Islamic law; but neither will India's Hindu-majority Parliament.

Since the Bangladesh government will not impose on *adivasis*, the challenge therefore is for IPs to gather themselves and collectively decide to change their customary law to undo polygyny,⁴ apply equal inheritance for men and women,

³ Juridical system encompasses judicial legislative procedure, customary law and traditional systems.

⁴ Polygyny is the practice of a man having more than one wife. It still takes place in some places, though the practice is in decline.

Power and Responsibility

As chief, I have had to sit as a judge for tribal cases. In Chakma customary law, by tradition on child custody, if the baby is weaned and the baby stops breastfeeding, then the right rests with the father. While the baby breastfeeds, the mother has custody over it.

In one recent case, I gave a ruling, based on the fact that I haven't seen any case in the past thirty years – nor in my father's cases – where any man has exercised his so-called right to take custody of the child, even after the baby has been weaned. There is a difference between power and responsibility. In general, a man, not wanting to be bothered with child custody, and in the event of a divorce, lets the former wife look after the baby.

Therefore that right, not having been exercised for three decades, must be forfeited; even if it may be argued that rights cannot be undone. It must be recognized that Chakma society and its customary law is not static; and this has to be dealt with. There is no such thing as customary laws being static and traditional – one's grandmother's law was not the same as her grandfather's and her grandmother's and so forth.

Customary law is like a path over a field. One has not stopped walking on the grass, but it is no longer a path. It is a grass, a field, a jungle.

The Chittagong Hill Tracts Land Commission

The Land Commission's role is to sit as a tribunal to deal with land disputes. The Land Commission can only deal out decisions like a court, but it is not going to allot lands. What is needed is a commission that will handle land allotment as well. We have the district councils in the Hill Tracts. It would be good if there were a Land Commission for the plains as well. Or as an alternative or supplement, the district judges or sub-judges could sit one day a week to deal with non-commercial agricultural lands, where it could be, say, one *bigha*¹ or two *bighas*, or three acres, rather than corporate city holdings? Why do we need to have that under the civil procedure court? Why cannot it be done without having to go through laws? I see no problem. If we could cut across those and say, "No appeal! No appeal to the high

¹ *Bigha* is a unit of measurement of land used in South Asia.

court!"—unless somebody said this were a matter of great legal and constitutional importance. Why only *adivasi*? Why cannot even Bengalis go to such a Land Commission in the future and say, "I lost my one *bigha*. Somebody took it." and simply go to the district court, without need for any lawyer, holding only one piece of paper with the name of whoever took the land. It would be similar to the Land Commission in that it would follow procedure. But our own rebel justices create problems to dish out injustice to us.

I found an order from the Ministry of Land and actually shared copies with some friends in different parts of Bangladesh, where *khas* land, crown- or state-owned land was supposed to be given out in settlement to *adivasis* as a priority. But nobody has even invoked this. So it is lying somewhere in the Land Ministry.

for example. Other problematic areas relate to child custody, maintenance and inheritance. The opportunity to introduce reforms does exist. However, there is patriarchy everywhere, even within indigenous communities. The problem sometimes is that indigenous peoples' movements tend to sweep gender issues and women's rights under the carpet.

In the plains⁵ there is a perception that *adivasi*, indigenous or hill women are actually much freer. Although *adivasi women may enjoy greater mobility*

⁵ The plains region of Bangladesh (as opposed to the hilly, mostly Chittagong Hill Tracts areas) are generally referred to as the "plains."

and social freedom compared with Bengali women, this certainly does not automatically translate to the recognition of women's rights even under their own system. With regard to our traditional systems of governance, women are severely underrepresented.

The crux of this article is that customary laws should be respected, but these **must not fall below the standard of international human rights**. International human rights subsume women's rights, including the right to non-discrimination.

IP Land Rights under Bangladeshi Law

Peering at Bangladeshi law in the plains through a magnifying glass and trying to find how many laws refer to indigenous peoples, one would find nothing. There are only two laws, apart from the Cultural Institutions Act, where only twenty-seven indigenous peoples have been recognised. And the only substantive law is the East Bengal State Acquisition and Tenancy Act, based on the Chota Nagpur Tenancy Act from India and the Bengal Tenancy Act, which are in turn characterised by rather paternalistic systems of preventing land alienation to non-*adivasis* without the permission of the district officers or deputy commissioner. The biggest challenge with this law is rooted in the system of titling introduced by the British, who thought controlling the transfer of titles was tantamount to controlling occupation and possession. However, this has not been the case in Bangladesh; nobody cares. In fact, it

Beyond land entitlement: Experiences from India

Ekta Parishad works with the adivasis in the Fifth Schedule areas in India. Among the many issues they have found, one is the massive land grabbing by non-tribals, in spite of many laws. British tenancy laws and other laws are being undercut by devious land grabbing methods. The concern is that because tribals are losing so much of their land, women are migrating to the cities as cheap labourers, maidservants and construction workers. In just one small town in Chhattisgarh, 45,000 women had left for Delhi to work as maidservants. In fact, majority of maidservants in cities like Delhi are adivasis from Jharkhand and Chhattisgarh areas. This out-migration of women must have some impact on customary law, since customary law is not static.

Moreover, a Forest Rights Act for forest dwellers was passed in 2006. Despite having forest rights committees with reserved seats for women, women are unaware they are on the forest rights committees, as findings from all of Ekta Parishad's surveys show. This somehow echoes the problems India has encountered under joint forest management and social forestry, similar to the case of Bangladesh, where women do not even know there

are seats, or they have absolutely no power in the forest committees.

There have been instances in India, where the Forest Department uses the forest committee to pay off a certain tribal group like the Gonds, to oppose and push the more primitive tribal Baigas out of their forest dwelling. This is highly complicated, and the impact on women is tremendous in the sense that they lose their forest land rights.

Women in the Sahariya tribal belt recounted to Ekta Parishad that fifteen years ago, because of the expansion of the Madhav National Park in Shivpuri, in one area near Chambal, western Madhya Pradesh, the Forest Department took their land titles in hopes of securing land in the buffer zones outside the forest. However, when they went outside the buffer zones, they found there was no land at all. They still do not have electricity, or schools, or other basic necessities.

The kind of land grabbing and lack of implementation of forest rights is so great that a larger connection on those issues, beyond land entitlement, is needed.

Mining in India has completely overrun the Panchayat Extension to Scheduled Areas Act (PESA). PESA came in 1995

as a way to give the gram sabha¹, the local village, basically, powers over forest areas, as well as to give community rights. PESA is theoretically one way of addressing *adivasi* representation. It applies only to peninsular India, and not to northeast India. However, PESA is not serving the spirit that the Indian Government set out. Mining companies have simply come in, without any question at all of consulting with any local communities in forest dwelling areas. Additionally, small-scale illegal mining is taking place in almost every forest area across India, often backed by political interests.

Networking across regions is an absolutely critical piece to deal with complex land issues. It is yet difficult to make headway against land grabbing, at the speed it is taking today, unless groups come together and use laws as their tools and weapons.

1 *Gram sabha* refers to the body of men and women above the age of 18 in the *gram panchayat* or local government in India.

is possible to bribe one's way into the land registry office.

Bangladesh shares a common heritage of laws with India. British rule over indigenous peoples' areas stretched from India and Pakistan to what used to be called upper Burma, and was indirect, installing a supervisory mechanism and

a chief administration system. There were chiefs and headmen. Bangladesh, India and Nepal have all gone on in different ways in terms of dealing with indigenous people, their land rights, and self-government.

The CHT is somewhat similar to the northeast Indian states, with varying

degrees of autonomy. Their level of autonomy is far less than, say, Nagaland, Mizoram or Meghalaya, and perhaps is somewhere in between the north-eastern states and some of peninsular India, such as Madhya Pradesh. In northeast India there are the autonomous states. In between there are a series of what Barrister Roy calls *matryoshka* models of autonomy, based on the Russian dolls placed one inside the other. So there is the Assam state, then the borderland council, then the district council, regional council and so forth. These similarities are shared by Bangladesh and its neighbouring states.

The Chittagong Hill Tracts is home to many *adivasi* communities in Bangladesh. In the CHT, the law, strengthened by the Peace Accord of 1997, recognises limited autonomy; although the word “autonomy” is void. Political leaders have not prioritised the implementation of the Peace Accord, or the granting of greater autonomy. Nonetheless, customary land rights have a stronger footing in the CHT than in the plains. There are elected councils at regional and district levels. On the other hand, the “plains” refer to those parts of the country outside the Chittagong Hill Tracts. In contrast to the CHT, the *adivasi* populations in the plains are much more dispersed. Moreover, the self-government system of the *adivasis* is not recognised by the State.

The Vested Property Act (VPA) was a result of the war between Pakistan (of which Bangladesh used to be a part)

and India. Those with links to India were branded as enemies and subsequently divested of their property. The VPA has been used indiscriminately against religious minority people, particularly Hindus in Bangladesh as well as *adivasis*, mostly in the northern plains. Many people do not know if someone is, say, Santal, low-caste Bengali, or Hindu; the fact is that many have lost their property in the name of the Vested Property Act.

There are safeguards against land alienation provided for by the Bengal State Acquisition and Tenancy Act, and also the Hill District Council in the CHT. The Hill District Council has the authority to provide land grounds, but also to have a shield against arbitrary land titling and land leases by the district authorities. But that is also not fully implemented as yet. This is a scope within which, for example, women could be holding land titles or somehow getting a more equitable and de-gendered way of dealing with resource management.

Bangladesh, unlike India, which has the Forest Rights Act, still does not have a Forest Dwellers Rights Act. We are still struggling to see if we can get village forest rules in amending the forest act. Particularly in the plains, IPs have encountered the severe problem of being locked up under the Forest Act.

I am associated with an NGO dealing with community forests. One of the greatest struggles, with regard to community forest management is including women as fully and formally



The Philippine Experience

The Philippines is another place to look at for their Indigenous Peoples' Rights Act and the National Commission on Indigenous Peoples (NCIP), which distributes certificates on ancestral titles and domains. Some lessons perhaps could be applicable in South Asia.

Although the Philippines famously has a National Commission on Indigenous Peoples (NCIP), this commission has increasingly become the biggest stumbling block to the realization of indigenous peoples' rights, rather than the advocate for IP communities it was meant to be. Fortunately, a new government administration is in power, and with that comes a significant opportunity of recommending new commissioners. The NCIP comprises seven members; but six of those members have resigned or have been forced to resign, leaving only one commissioner. PAFID including some civil society organisations working with indigenous peoples, under the sponsorship of the Chair of the House [of Representatives] Committee on Indigenous Peoples, has been invited to shortlist nominees for the new President to appoint as Commission

members. In the Philippines, only indigenous peoples are allowed to be nominated and appointed as commission members. Unfortunately, these are not the *marginalised* IPs. Many members of Congress are IPs themselves.

PAFID is presently involved in an initiative to create a common IP agenda for the country. The Commission has failed to benefit the IPs. The free, prior and informed consent (FPIC) process has been corrupted, and the NCIP has been seen more to work for the interests of mining companies. Money is collected from mining companies in exchange for the Commission's forcing indigenous communities to sign blank papers and then make it appear as if the IPs have indeed given their consent to external investments. There are also experiences where companies offer many goodies, have a community representative sign on the dotted line to supposedly mean FPIC.

Therefore, having a good law actually is only half the success. Implementation is the more difficult part.

The NCIP is a merger of three former government agencies, namely the Office of Northern Cultural Communities, Office of Southern Cultural Communities, and the Office of Muslim Affairs. The Senate was warned that there was not much wisdom in retaining and absorbing into the new commission the very same bureaucrats who did little for indigenous peoples before. Over time, nothing much has changed for IPs. Old habits die hard: corruption cannot be stamped out. Part of the problem lies in the tenure security guaranteed by the Philippine Constitution and the Civil Service Commission for government employees. It is only possible for Government to lay off employees by offering compensation, for which it does not have sufficient funds.

Nonetheless, PAFID remains hopeful that this opportunity to recommend commissioners will result in positive change, with commissioners sympathetic to the plight of indigenous peoples.

Sam Pedragosa, PAFID

as committee members, granting them equal rights to vote and deal with community forest resources.

Collective land rights are recognised under Chittagong Hill Tracts Regulation 1900 and customary laws, but of course, we are fighting a huge battle, not made any easier by people from the plains, including unfortunately a retired judge as chair of the CHT Land Commission who has repeatedly emphasised the use of surveys. But surveys connote the imposition of a plain land, individual title, crown land concept on a customary regime that is

definitely flatter. Although it cannot be denied that there have been difficulties within the traditional structure of head men chiefs and all-male bodies, largely a man's show. But at least indigenous peoples have a say regarding their land.

The challenge is to retain some of the customary commons in the Chittagong Hill Tracts, by using the district council law and invoking customary practices and so forth – if not a sword, then a shield – to keep at bay the privatisation regime enveloping every part of the CHT. There are all kinds of companies – small, medium, big, national,

“It is extremely important to note that governments are still sensitive to criticisms or oversight by international bodies, making it all the more imperative to keep on.”

multinational – but regardless of shape or size, a company is a company. In the case of the CHT, all of these have been taking leases for lands. There have been incidents wherein IPs have been arrested for resisting the taking of their lands. At least there are steps that can be taken to address this challenge.

The Chittagong Hill Tracts has been the setting for militarisation, artillery camps, and training grounds and human rights violations, not to mention a twenty-year conflict of guerrillas versus government troops. Conflicts between settlers and *adivasis* persist in the Chittagong Hill Tracts. The women have had to obviously bear the brunt of these.

Status of *adivasi* women in Bangladesh

Legal status of indigenous women under international, national and IP customary law

CEDAW is moth-eaten with its reservation clauses,⁶ its implementation poor. Debates have gone on for years on whether to withdraw those reservations, rather than on the constitutional provisions that do apply. Nonetheless, despite the dysfunctionalities in implementation within the international system, it remains important to use any tool available; in which case, CEDAW is one

⁶ Upon accession, the Bangladesh Government made reservations on Articles 2, 13 (a) and 16 (1) (c) and (f) as “they conflict with *Sharia* law based on Holy Quran and Sunna.” In 1997, it withdrew its reservations on articles 13 (a) and 16 (1) (f). Source: United Nations Treaty Series.

stick to use. There is no alternative but to continue with international processes to fight for *adivasi* women’s rights.

Unfortunately, *adivasi* women suffer from so much discrimination. What are Bangladeshi women doing with regard to CEDAW? How many *adivasi* women are actually participating in polls? How many Bangladeshi women have a window or informed perspective on *adivasi* land and women’s issues? The picture is not a happy one.

It is extremely important to note that governments are still sensitive to criticisms or oversight by international bodies, making it all the more imperative to keep on. International processes should be connected to one another. To illustrate, a shadow report on CEDAW should tackle *adivasi* issues. The ILO Convention monitoring committee was cross-referring to other special rapporteurs and processes within the human rights system, linking up religious intolerance and the status of women with the ILO Convention. But of course these reports are not self-implementing. Ultimately, they must be used at the national level, disseminated to the media, and shared to encourage civic and political action.

Personal laws are gendered, and thus need to be more equitable and do away with discrimination altogether. Because even in matrilineal societies like *Garos* and *Khasis*, there is patrimony. Though the youngest daughter inherits the ancestral house, not all women receive ancestral property.

Political, social and economic status of indigenous women

In terms of political status, overall in Bangladesh, women's seats in Parliament are just filled up by the major political parties. India has struggled with it. The Indian Parliament now has one-third of seats reserved for women. The limited political status of women occurs at all levels of government —whether at the level of union *parishads*, union councils, or sub-district councils. The Chittagong Hill Tracts system of regional council and district council has severe problems of underrepresentation of both the smaller ethnic groups and women. The interim hill district councils have one woman out of fifteen seats. At the regional council, as well, there are problems in the traditional system concerning inheritance systems and again the severe underrepresentation of women. Again, *adivasi* women suffer multiple discrimination.

Impediments

FOSSILISING "TRADITION"

Digging up history can shed light on discriminatory inheritance laws, which have been passed off as tradition. But a century ago, we only had *jum* shifting cultivation. There was nothing to inherit, only the house, the pots and pans. It can thus be invoked that traditional laws on Inheritance were not necessarily so gendered. It is when the British came, introduced private property and implemented land administration and individual titling, that inheritance laws became discriminatory.

The Plight of Tea Estate Workers in Bangladesh

Tea is one of the world's favourite drinks, and is a major export of Bangladesh. But the conditions surrounding those working on tea estates are little known.

Many people from *adivasi* communities, particularly the Oraon, Munda, and Khyang, work in the tea estates in Bangladesh's Sylhet area. In ways, the tea plantations seem like a British colony. The rights of *adivasi* workers in the tea gardens – mostly women – are always neglected, and their situation is extremely dire. The *adivasi* communities in the tea estates face a number of problems – poor health, poor access to water, no access to education, and no land ownership. Daily wages are miserably scant, falling below one dollar: a mere 48 taka. Though there is some public protest to raise wages for government workers, there is none for tea garden workers.

Neither the Bangladesh Nationalist Party (BNP) nor the Awami League does anything for tea estate workers knowing that these people will not cast votes for them. One Parliamentarian was largely elected by tea estate workers, but to what

extent does he speak about tea estate workers' issues? To make matters worse, tea estate owners' rights are specifically protected in the first schedule to the Constitution, and nobody can challenge these laws.

Support for tea estate workers has been next to nothing. Much clearly needs to be done for these tea estate workers, whose situation is probably worse than that of the average *adivasi*, worse than in the Hill Tracts, worse than even the plains region in most cases, essentially because *there are no land rights*. Neither husband nor wife has any land – so what of women's rights to land? They live in a house they cannot call theirs, on soil that is not theirs. Their plight reflects some degree of servitude and slavery in modern-day times, a vestige of the British colonial system.

Some tea estate leaders have joined the *adivasi* networks, including a recently established one in Sylhet. Hopefully they will be able to take on some of the issues the *adivasi forum* has not yet been able to take up, to bring more attention to Bangladesh's tea estate workers.

Child labour practices still exist, even amongst some *adivasi* women, who send off their daughters to work as domestic helpers. These are [practically] slavery laws whose practices still exist even amongst my society as well. Children, particularly girls, have to bear the brunt. However, amongst indigenous peoples I have not heard that female children receive less protein or less of the good food, or that boys are given the egg, and the girls the vegetables, though it may exist. It is a common practice in the plains.

POLICY IMPERATIVES

One problem Bangladesh is facing is that its two former women prime ministers did not necessarily take women's issues forward as a policy imperative.

SOCIAL FORESTRY

The government [of Bangladesh] runs social forestry projects— which are actually plantations —and there they have room for women to be full committee members, so they can get recognition like men.

ORGANIZATIONAL WEAKNESSES

There are women networks, including in the Hill Tracts, trying to move inheritance rights and indigenous women's issues forward. However, most of these movements are rather oriented towards towns and cities, as well as middle class women. But of course one has to start somewhere. One project had a facilitator, a young woman of nineteen, who had to deal

with the grandfatherly figure of the village *karbari*⁷. Working at the village level, in terms of sensitising and pushing for rights, is difficult. People continue putting off the issue.

Finally, postponing women's rights until people's rights are achieved is a major impediment.

Opportunities

Challenges lie in getting forth land rights, but there are opportunities. For one, we have *relatively less religious conservatism*. This implies that if we want to reform the inheritance laws of the Chakma or the other indigenous groups to say women will get equal rights, then we can do it. Some groups, including Chakma society, sometimes already share property with women, in some cases equally. In some cases, people are leaving wills. In some cases, there is an understanding. But of course one might counter that perhaps such cases are because of rights, and not because somebody is truly agreeing with the principle. So there the problem still lies.

Another opportunity is the *greater social freedom* indigenous women enjoy, which can be used for greater mobilization.

A *semi-autonomous administrative system* is in place in the Chittagong Hill Tracts, with district councils, regional councils and traditional systems, within which it is possible to create some new rules.

⁷ In Bangladesh, a *karbari* is the head of a village.

“Digging up history can shed light on discriminatory inheritance laws, which have been passed off as tradition.”

Finally, *participation in international processes*, despite its difficulties and dysfunctionalities this is something that we need to still use.

While it is true that women are still doing most of the backbreaking work, such as transplanting paddy, some men also participate. The Chakmas have this concept of *malaya*, which means one can draw upon the community to give labour of one day. Instead of each individual tending to his or her patch of paddy field, villagers engage in community labour, doing one patch at a time. This is to show that there can be more equitable burden sharing between men and women, though this is unfortunately not always the case.

There is a little window, but in other cases, the laws are still extremely difficult.

Summary⁸

- Indigenous peoples should not be subjected to non-traditional customary systems; at the same time, they are not static and we must continuously reflect on challenging these traditions.
- The second point is how to use and maximise international agreements and conventions to pressure governments. While most of them are not binding, they are nonetheless instruments to exact moral obligation from the government.
- Thirdly, having a policy does not automatically translate to implementation. Therefore,

there is a need for vigilance. We also need to look beyond legal means to address the rights of indigenous women. One way is to develop capacities of women to participate in available platforms or mechanisms.

- Finally, CSOs working together can also work with the UN Permanent Forum on Indigenous Issues to advocate for land rights for indigenous peoples, notably indigenous women. ■

⁸ As summarized by Mr. Nathaniel Don Marquez, ANGO Executive Director.